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**WRITTEN/VERBAL OPPONENT TESTIMONY OF DEBRA L. SCHAFFNER**  
*Constituent of Ohio Senate District 20*

Hearing on Senate Bill No. 137, “Generally prohibit the use of ranked choice voting”  
9:30 am

Mr. Chairman Rulli and members of the Committee:

Thank you for this opportunity to provide testimony in opposition to Senate Bill 137. My name is Debbie Schaffner. I am a resident of Baltimore, Ohio, where I sit on Village Council and chair the Rules Committee. Baltimore is a small village in Fairfield County. Our water supply – while deemed safe by EPA standards – is basically undrinkable due to its taste, its color and its odor. We either use water softeners and filters, or we drink bottled water. I would love to be here today talking to Senators about how we can fix a serious problem such as a village water supply. It’s unfortunate that instead we are here to debate a manufactured problem.

In my retirement years, I have become active in volunteering with pro-democracy organizations and am a major supporter of Ranked Choice Voting. I started volunteering for Rank the Vote Ohio in 2022, and since then I’ve had the opportunity to talk to literally thousands of Ohio voters about Ranked Choice Voting and have found that Ohio voters are not only interested in implementing Ranked Choice Voting, but excited to know that there is an electoral reform available to them that will make them feel as if their voice is heard.

I’m opposed to Senate Bill 137 for many reasons, but primarily because it blatantly violates a municipality’s constitutional right to self-govern. While the senate bill does not flat-out ban Ranked Choice Voting, it promises to PUNISH any municipality that exercises its constitutional right to implement Ranked Choice Voting.

This just didn’t sound right to me, so I turned to Google. I’m not an attorney, but I am a pretty good researcher. And this is what I found.

Article XVIII, Section 3 of the Ohio Constitution provides that “[m]unicipalities shall have the 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 addition, a chartered municipality may exercise all other powers of local self-government.

In 1980, the Supreme Court of Ohio held that if a substantive (rather than procedural) power of local self-government is involved, then regardless of whether a charter or non-charter municipality is involved, the municipal exercise of “substantive” powers of local self-government prevails over state laws. *Benevolent Ass’n v Parma*, 61 Ohio St.2d 375 (1980).

The Supreme Court of Ohio established in 2002 that in order for a statute such as Senate Bill 137 to be deemed a “general law” for the purposes of the Home Rule analysis, 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 set forth police, sanitary, or similar regulations, and 4) prescribe a rule of conduct upon citizens generally.” *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, syllabus.

Senate Bill 137 does NOT set forth police, sanitary, or similar regulations. It ONLY limits legislative power of a municipal corporation and thus cannot, by the Supreme Court of Ohio’s own 4-prong test, be considered a general law.

There are a number of Supreme Court cases that uphold the premise that if an ordinance is NOT an exercise of police power then the ordinance is NOT in conflict with the statute.

For example, In 2008 the Ohio Supreme Court upheld in *Mendenhall v Akron* that a municipality exceeds its powers under the Home Rule Amendment and a state statute takes precedence over a local ordinance 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. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, ¶ 17.

Other Supreme Court cases with similar rulings include *Cleveland v State* (2014), *State v City of Bay Village* (1986), and *City of Dayton v State* (2017).

Again, I’m not an attorney, but it is clear that Senate Bill 137 fails the definition of a “general law” set forth by *Canton v. State* because (a) it is not a police, sanitary or other similar regulation, and in fact exists only to limit and/or restrict self-governance and (b) it does not seek to control citizen behavior.

“It’s your constitutional right to do it, but we’ll punish you if you do”. That’s what Senate Bill 137 says.

The idea of a system that punishes a municipality for exercising its constitutional right is in and of itself unconstitutional. “It’s your constitutional right to do it, but we’ll punish you if you do” is not good government. It’s not even legal government. **As *Canton* also concluded, if a statute is not a general law, then it is “an unconstitutional attempt to limit the legislative home-rule powers” of municipalities.** *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005.

I’ve attached a copy of a *Members Brief* dated March 8, 2024, produced by the Ohio Legislative Service Commission for members of the General Assembly. The brief lays out the same case law citations that I’ve provided and more.

In summary, review of the laws regarding Home Rule and “general law” reveal a clear picture that Senate Bill 137 is unconstitutional, as well as big government overreach, and I would urge you to vote ‘NO’ on Senate Bill 137.

Sincerely,

Debbie Schaffner





# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

Author: Alyssa Bethel, Attorney  
Reviewer: Amber Hardesty, Division Chief

Volume 135  
March 8, 2024

## Municipal Home Rule

Municipal corporations have home rule authority, which includes the power of local self-government and the exercise of certain police powers. Because these powers originate in the Constitution, laws passed by the General Assembly that interfere with them may be invalid as applied to municipal corporations unless those laws are sanctioned by other provisions of the Constitution. Courts apply an analytical framework to determine if a municipal ordinance or state law is valid under the Home Rule Amendment.

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In Ohio, municipal corporations (cities and villages) have certain powers granted to them in Article XVIII of the Ohio Constitution known as “home rule” powers. These include: (1) the power of local self-government and (2) the power to adopt and enforce local police, sanitary, and other similar regulations that are not in conflict with general laws.<sup>1</sup> In the area of home rule, one must rely on the courts to determine the validity of a state law or municipal ordinance. A state law that interferes with municipal corporations’ home rule authority (e.g., by attempting to preempt an area of law), or a municipal ordinance that violates the Home Rule Amendment (e.g., by conflicting with a general law), may be found invalid by a court.

<sup>1</sup> Ohio Constitution, Article XVIII, Section 3. Municipal corporations also have “utility home rule,” related to the ownership and operation of public utilities, which this brief does not discuss. See Ohio Const., art. XVIII, secs. 4, 5, and 6.

## Local self-government

The exact scope of “all powers of local self-government” has not been defined by the courts, but cases have established standards for determining what the term includes. The Ohio Supreme Court has stated that local self-government authority includes “such powers of government as, in view of their nature and the field of their operation, are local and municipal in character.”<sup>2</sup> The Court also has stated that local self-government authority “relates solely to the government and administration of the internal affairs of the municipality.”<sup>3</sup> Courts have found the following to be matters of local self-government:

- The improvement, leasing, and conveyance of municipal property;<sup>4</sup>
- Salaries and benefits of municipal officers and employees;<sup>5</sup>
- Qualifications for village council members;<sup>6</sup>
- Recall of municipal elected officials;<sup>7</sup>
- Procedures for the sale of municipal property;<sup>8</sup>
- Regulation of civil service;<sup>9</sup>
- Competitive bidding;<sup>10</sup>
- Manner and method of municipal expenditures;<sup>11</sup>
- Organization and regulation of the municipal police force.<sup>12</sup>

The Home Rule Amendment does not give municipal corporations authority to regulate activities *outside* their borders. Known as the “statewide concern doctrine,” courts will invalidate a municipal ordinance that affects territory beyond the municipal corporation. Annexation and detachment of territory have been found to be matters of statewide concern and, thus, outside

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<sup>2</sup> *State ex rel. Toledo v. Lynch*, 88 Ohio St. 71, 97 (1913).

<sup>3</sup> *Beachwood v. Bd. of Elections of Cuyahoga Cty.*, 167 Ohio St. 369, 371 (1958).

<sup>4</sup> *Dies Electric Co. v. Akron*, 62 Ohio St.2d 322 (1980); *State ex rel. Leach v. Redick*, 168 Ohio St. 543 (1959); and *Babin v. Ashland*, 160 Ohio St. 328 (1953).

<sup>5</sup> *State ex rel. FOP, Ohio Labor Council v. City of Sidney*, 91 Ohio St.3d 399 (2001); *Northern Ohio Patrolmen’s Benevolent Ass’n v. Parma*, 61 Ohio St.2d 375 (1980); and *State ex rel. Mullin v. Mansfield*, 26 Ohio St.2d 129 (1971).

<sup>6</sup> *State ex rel. Ziegler v. Hamilton County Bd. of Elections*, 67 Ohio St.3d 588 (1993).

<sup>7</sup> *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203 (1948).

<sup>8</sup> *Young v. Dayton*, 12 Ohio St.2d 71 (1967).

<sup>9</sup> *State Pers. Bd. of Review v. City of Bay Vill. Civ. Serv. Comm’n*, 28 Ohio St.3d 214 (1986).

<sup>10</sup> *Greater Cincinnati Plumbing Contractors’ Ass’n v. City of Blue Ash*, 106 Ohio App. 3d 608 (Ohio Ct. App., Hamilton County 1995).

<sup>11</sup> *State ex rel. Cronin v. Wald*, 26 Ohio St.2d 22 (1971).

<sup>12</sup> *State ex rel. Canada v. Phillips*, 168 Ohio St. 191 (1958).

the scope of municipal home rule powers of local self-government.<sup>13</sup> However, municipal corporations have authority beyond their territory when that authority is otherwise constitutionally granted (e.g., utility authority) or statutorily granted (e.g., cemeteries).<sup>14</sup>

### **Adoption of charter to exercise local self-government powers**

The Ohio Constitution requires the General Assembly to pass laws to “provide for the . . . government of cities and villages.”<sup>15</sup> These laws appear in Title 7 of the Revised Code and set forth the general statutory plan for cities and villages.<sup>16</sup> The Ohio Constitution also allows – but does not require – municipalities to adopt a charter for their government, under which they may exercise all powers of local self-government.<sup>17</sup> Ohio has over 900 municipal corporations; more than 300 have adopted a charter and the remaining 600+ are nonchartered. While a charter is not necessary for the exercise of police powers, a charter is needed to exercise some – but not all – aspects of local self-government.

In 1980, the Ohio Supreme Court held that a nonchartered municipal corporation must follow the *procedure* prescribed by state statutes in matters of local self-government, but may enact ordinances that vary from state law regarding *substantive* matters of local self-government.<sup>18</sup> So, a chartered municipal corporation may vary from state law on both procedural and substantive matters of local self-government, while a municipal corporation that does not adopt a charter must follow the procedures provided in state law for the exercise of local self-government matters.

Courts have not decided enough cases to give clear guidance on whether something is considered substantive or procedural. The Ohio Supreme Court has found the following to be substantive: the amount of compensation paid to municipal employees who are on leave of absence as members of the armed forces reserve<sup>19</sup> and wages of city employees.<sup>20</sup> And, the Court has found the following to be procedural: the process for adopting zoning ordinances,<sup>21</sup> qualifications for village council members,<sup>22</sup> and the procedure for laying off employees.<sup>23</sup>

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<sup>13</sup> *In re 118.7 Acres in Miami Twp. to Moraine: Miami Twp. Bd. of Trs. v. Caton*, 52 Ohio St.3d 124 (1990) (annexation) and *Beachwood v. Board of Elections*, 167 Ohio St. 369 (1958) (detachment).

<sup>14</sup> Ohio Const., art. XVIII, secs. 4, 5, and 6 (utilities); and R.C. 759.02 (cemeteries).

<sup>15</sup> Ohio Const., art. XVIII, sec. 2.

<sup>16</sup> See, mainly, Chapters 731 and 733.

<sup>17</sup> Ohio Const., art. XVIII, sec. 7.

<sup>18</sup> *Northern Ohio Patrolmen’s Benevolent Ass’n v. Parma*, 61 Ohio St.2d 375 (1980).

<sup>19</sup> *Id.*

<sup>20</sup> *United Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union No. 377 v. City of Youngstown*, 64 Ohio St.2d 158 (though minimum wage law prevails because of Article II, Section 34a of the Ohio Constitution); and *State, ex rel. Evans v. Moore*, 69 Ohio St.2d 88 (1982).

<sup>21</sup> *Wintersville v. Argo Sales Co.*, 35 Ohio St.2d 148 (1973).

<sup>22</sup> *State ex rel. Ziegler v. Hamilton County Bd. of Elections*, 67 Ohio St.3d 588 (1993).

<sup>23</sup> *Treska v. Trumble*, 4 Ohio St.3d 150 (1983).

## Police power

The second power granted in Section 3 of Article XVIII is the power to adopt and enforce local police, sanitary, and other similar regulations that are not in conflict with general laws. “Police power” has been defined as the authority to make regulations for the public health, safety, and morals, and the general welfare of society.<sup>24</sup> Examples of regulations found to be police regulations include those pertaining to criminal offenses, licensing requirements, and zoning regulations. Municipal laws for the exercise of municipal police powers cannot be in conflict with general laws of the state. The terms “conflict” and “general law” each have a particular meaning for home rule purposes.

### **Canton test**

To be a “general law,” a statute must satisfy all four prongs of the *Canton* test. 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 set forth police, sanitary, or similar regulations; and (4) prescribe a rule of conduct upon citizens generally.<sup>25</sup>

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“General laws,” for purposes of home rule analysis, are not all laws enacted by the General Assembly.

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State statutes that fail the *Canton* test typically do so because they purport only to grant or limit the legislative authority of municipal corporations and do not prescribe a mode of conduct as part of a comprehensive enactment setting forth police, sanitary, or similar regulations. A recent example of this is *Dayton v. State*, decided in 2017, regarding statutes enacted by the General Assembly to regulate municipal use of traffic-monitoring devices. The statutes in part required a municipality to conduct a study and notify the public before using a device, required a police officer to be present at the device, and allowed tickets to be issued via a device only if a vehicle exceeded the speed limit by a particular amount. Because these statutes only limited legislative authority of municipal corporations and did not set forth police regulations, the Ohio Supreme Court found the provisions violated the Home Rule Amendment.<sup>26</sup>

### **Conflict**

The existence of a “general law,” alone, does not preclude the exercise of municipal police power authority; a municipal ordinance is only invalid if it *conflicts with* the state’s general law. For home rule purposes, an ordinance is in “conflict” with a general law if the ordinance “permits or licenses that which the statute forbids and prohibits, and vice versa.”<sup>27</sup> For instance, Ohio courts have held that a municipal licensing ordinance conflicts with a state-licensing scheme if the ordinance restricts an activity that a state license permits, including by requiring a municipal

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<sup>24</sup> *Miami County v. Dayton*, 92 Ohio St. 215 (1915).

<sup>25</sup> *Canton v. State*, 95 Ohio St.3d. 149 (2002).

<sup>26</sup> *City of Dayton v. State*, 151 Ohio St.3d 168 (2017).

<sup>27</sup> *Village of Struthers v. Sokol*, 108 Ohio St. 263 (1923), paragraph two of the syllabus.

license for the same activity.<sup>28</sup> The Ohio Supreme Court has specified that an ordinance is *not* in conflict simply because it penalizes acts that are not mentioned in the general law, or because certain acts are prohibited in the general law and not mentioned in the ordinance.<sup>29</sup> An ordinance that includes a criminal penalty conflicts if the ordinance changes a state law penalty from a misdemeanor to a felony, or vice versa.<sup>30</sup>

## Analytical framework

The Ohio Supreme Court has set forth an 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 (or perhaps, a matter of statewide concern). If the ordinance relates to **matters of local self-government**, and the municipal corporation has not adopted a charter, the next step is to determine if the matter is procedural or substantive. A chartered municipal corporation may vary from state law on all matters of local self-government while a nonchartered municipality may vary only regarding *substantive* matters.

If the ordinance involves an **exercise of police power**, the court must determine whether the statute at issue is a general law under the four-part *Canton* test. If the statute is a general law, the local ordinance is invalid if it conflicts with the general law. The final step, then, is to determine whether the ordinance conflicts with the statute. If the ordinance conflicts with the general law, it will be held unconstitutional. If there is no conflict, the municipal action is generally permissible even though the statute is a general law.

## Preemption efforts

It is important to remember that within the realm of police power, the Ohio Constitution provides for concurrent municipal police power authority, supplementary to state regulation.<sup>31</sup> There is no supremacy clause in the Ohio Constitution; the test is “conflict with general laws.” The Ohio Supreme Court explained this as recently as 2017:

The doctrine of preemption under state law is narrower than its federal counterpart. State law is preempted when Congress intends federal law to occupy the field, even if there is not direct conflict between the state and federal rules. Under state law, by contrast, a local ordinance is preempted only when a general law of the state directly conflicts with it.<sup>32</sup>

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<sup>28</sup> *Anderson v. Brown*, 13 Ohio St.2d 53 (1968) (an ordinance requiring municipal licensure for the operation of a mobile home park conflicted with a state law providing such licensure); *Auxter v. Toledo* 173 Ohio St. 444 (1962) (Toledo ordinance was invalid because the ordinance prohibited the sale of beer without a Toledo license, though a state license authorized the sale of beer).

<sup>29</sup> *Id.*

<sup>30</sup> *Cleveland v. Betts*, 168 Ohio St. 386 (1958).

<sup>31</sup> *Mendenhall v. City of Akron*, 117 Ohio St.3d 33 (2008).

<sup>32</sup> *State ex rel. Rocky Ridge Dev., L.L.C. v. Winters*, 151 Ohio St.3d 39, 42 (2017).

The Ohio Supreme Court has stated plainly that “[t]he General Assembly may not by statute prohibit the municipal home-rule authority granted by Article XVIII, Section 3 of the Ohio Constitution.”<sup>33</sup> In other words, the constitutional authority of municipalities to enact local police regulations emanates from the Ohio Constitution, adopted by the citizens of Ohio, and “cannot be extinguished by a legislative provision.”<sup>34</sup> Notwithstanding this, the Ohio Supreme Court upheld R.C. 9.68, which prohibits outright local regulation of firearms, finding the section “is a general law that *displaces municipal firearm ordinances* and does not unconstitutionally infringe on municipal home-rule authority.”<sup>35</sup>

In contrast, the Ohio Supreme Court found a more recent effort by the General Assembly to displace municipal ordinances regarding towing to be unconstitutional. The General Assembly enacted a statute to subject towing entities to regulation by the Public Utilities Commission of Ohio; the General Assembly included preemption language providing that towing entities are not subject to “any ordinance, rule, or resolution of a municipal corporation . . . that provides for the licensing, registering, or regulation of entities that tow motor vehicles.” The Court severed this language as unconstitutional, finding it violated the third prong of the *Canton* test because it purported only to limit legislative authority of the municipality and failed to set forth any police, sanitary, or similar regulations.<sup>36</sup>

## Limitations on municipal home rule power

Municipal authority may be limited by the U.S. Constitution or relevant federal laws. In addition, the Ohio Constitution contains limitations on a municipal corporation’s exercise of home rule powers; this Brief discusses only some of these.

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 financial records, and to provide for the examination of public undertakings conducted by a municipal authority. The Ohio Supreme Court has held these sections do not authorize the General Assembly to prescribe the *manner and method* that a municipal corporation must follow regarding its expenditures.<sup>37</sup>

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Other limitations found in the Ohio Constitution apply to municipal corporations.

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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

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<sup>33</sup> *City of Cleveland v. State*, 138 Ohio St.3d 232 (2014), paragraph one of the syllabus.

<sup>34</sup> *Fondessy Enterprises, Inc. v. Oregon*, 23 Ohio St.3d 213, 216 (1986).

<sup>35</sup> *Cleveland v. State*, 128 Ohio St.3d 135, 142 (2010).

<sup>36</sup> *Cleveland v. State*, 138 Ohio St.3d 232 (2014).

<sup>37</sup> *State ex rel. Cronin v. Wald*, 26 Ohio St.2d 22 (1971).

employees. The Ohio Supreme Court has held that laws passed by the General Assembly establishing the Prevailing Wage Law,<sup>38</sup> the Collective Bargaining Law,<sup>39</sup> the Police and Fire Pension Fund,<sup>40</sup> a law generally prohibiting residency requirements for political subdivision employees,<sup>41</sup> and a law prohibiting the employment of city residents as a term in a city public improvement contract<sup>42</sup> apply to municipal corporations under this provision, overriding any municipal home rule powers.

Finally, though not a direct limitation on home rule power, one recent approach by the General Assembly, which has been upheld by the Ohio Supreme Court, is to reduce a municipality's local government funds if the municipality does something the General Assembly seeks to discourage (e.g., using traffic-monitoring devices); the Court found this falls within the General Assembly's spending authority.<sup>43</sup>

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<sup>38</sup> *State ex rel. Evans v. Moore*, 69 Ohio St.2d 88 (1982).

<sup>39</sup> *Rocky River v. State Employment Relations Bd.*, 43 Ohio St.3d 1 (1989).

<sup>40</sup> *State ex rel. Board of Trustees v. Board of Trustees*, 12 Ohio St.2d 105 (1967).

<sup>41</sup> *Lima v. State*, 122 Ohio St.3d 155 (2009).

<sup>42</sup> *Cleveland v. State*, 157 Ohio St.3d 330 (2019).

<sup>43</sup> *Vill. of Newburgh Heights v. State*, 168 Ohio St.3d 513 (2022).