

134th Ohio General Assembly
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Testimony of John J. Kulewicz
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Proponent Testimony in Support of Sub. H.B. 430
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Chairman McColley, Ranking Member Williams, and Members of the Committee. My name is John Kulewicz. I am a partner of Vorys, Sater, Seymour and Pease LLP in Columbus. I appreciate the opportunity to appear before you today on behalf of the Ohio Realtors in support of the amendment to Substitute House Bill 430. The purpose of my remarks is to vouch for the constitutionality of the proposed amendment in the context of the Ohio Landlords and Tenants Law and under the home rule provisions of the Ohio Constitution.

The legislation would amend Chapter 5321 of the Revised Code. In conformance with home rule, it would reinforce the statewide character of the Ohio Landlords and Tenants Law by adding a specific preemption of local rent control measures to the existing general preemption of local ordinances relating to rental agreements. In addition, it would adopt legislative findings as to the statewide priority of maintaining adequate housing, and recite obstacles that local rent control measures pose to achievement of that objective.

1. The Ohio Constitution defines home rule authority.

The home rule provisions of the Ohio Constitution strike a balance between state and local law. Municipal corporations have authority under Article XVIII, Section 3, “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.*” (Emphasis added.) The Constitution also provides charter counties the authority to exercise “all or . . . any designated powers vested by the constitution or laws of Ohio in municipalities.” See Ohio Constitution, Article X, Section 3. In similar fashion, the Revised Code provides home rule townships the authority to “[e]xercise all powers of local self-government . . . other than powers that are in conflict with general laws” and “[a]dopt and enforce . . . local police, sanitary, and other similar regulations that are not in conflict with general laws.” R.C. 504.04(A)(1), (2).

2. Chapter 5321 governs landlord-tenant relations.

Within that structure, the Ohio Landlords and Tenants Law is a general law that governs landlord-tenant relations on a statewide and comprehensive basis. Enacted in 1974, the substantive terms of Chapter 5321 address landlord obligations, tenant obligations, rental agreement terms and conditions, security deposit procedures, termination, and related judicial procedures. Under Section 5321.06,

“[a] landlord and a tenant may include in a rental agreement any terms and conditions, *including any term relating to rent*, the duration of an agreement, and any other provisions governing the rights and obligations of the parties that are not inconsistent with or prohibited by Chapter 5321. of the Revised Code or any other rule of law.” (Emphasis added.) “Accordingly, parties to a lease agreement can agree to anything they wish within the limits of the law” under existing state law. *Vill. Station Assocs. v. Geauga Co.*, 84 Ohio App. 3d 448, 451, 616 (1992).

3. The Ohio Landlords and Tenants Law currently contains a general preemption of local measures that regulate rental agreement provisions.

Chapter 5321 currently further provides that “[n]o municipal corporation may adopt or continue in existence any ordinance and no township may adopt or continue in existence any regulation . . . that regulates the rights and obligations of parties to a rental agreement that are regulated by this chapter.” R.C. 5321.19. By virtue of that existing provision, Chapter 5321 generally preempts local ordinances, resolutions and regulations that seek to govern the rights and obligations of parties to a rental agreement.

4. The amendment would explicitly preempt local rent control measures.

The proposed amendment would reiterate that preemptive effect as to rent control in particular. It would: (a) expand the definition of

“rental agreement” to specifically include the “amount of rent charged or paid”; (b) add definitions of “rent control” and “rent stabilization”; (c) bar “political subdivisions” from imposing rent control or rent stabilization measures; and (d) adopt legislative findings and declarations that articulate the “overriding statewide interest” in a uniform approach to rent control and rent stabilization.

5. R.C. Chapter 5321 is a statewide general law.

To confirm that Chapter 5321 is a general law, we look to the four-part definition that the Supreme Court of Ohio has prescribed. In *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, ¶¶ 21-36, the Court ruled that a “general law” within the meaning of the home rule provision 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.”

Chapter 5321 readily qualifies as a general law under that standard. Its regulation of the landlord-tenant relationship is broad and substantive. It applies uniformly throughout the state, not only to local governments but also to “citizens generally.” If enacted, the

express preemption of rent control and rent stabilization in the amendment would become an integral part of the Ohio Landlords and Tenants Law.

6. As part of Chapter 5321, express preemption of local rent control measures would be a general law.

Especially in the context of Chapter 5321, the express preemption of local rent control measures would be a general law within the constitutional scope of home rule. The Supreme Court of Ohio considers individual elements of regulatory laws in the overall context of their related Revised Code provisions.

The ruling in *City of Cleveland v. State of Ohio*, 128 Ohio St.3d 135, 2010-Ohio-6318, is a prominent example. “[W]hen we consider the entire legislative scheme, as we must,” said the Court, “we conclude that when interpreted as part of a whole,” the provision declaring a need for uniform firearm laws throughout the state “does not unconstitutionally infringe on municipal home rule authority.” The Court ruled that it was error for a court of appeals to single-out and consider “in isolation” one “general law [R.C. 9.68] that displaces municipal firearm ordinances,” thus “leading to the erroneous conclusion that the statute is not part of a comprehensive statewide legislative enactment[.]” *Id.* at ¶¶ 1, 23, 29.

In *Am. Fin. Servs. Ass’n v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, the Court held that the General Assembly had enacted

comprehensive consumer mortgage lending regulations even though the applicable provisions (R.C. 1.63 and 1349.25 -.37) were codified in two different chapters.

In *Ohio Ass'n of Private Detective Agencies, Inc. v. N. Olmstead*, 65 Ohio St.3d 242, 244-45 (1992), the Court looked at the statutory structure for regulation of private investigators in its entirety.

In *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48 (1982), the Court held that “[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* [construed together] 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.”

7. The proposed amendment would serve the “overriding state interest” in a uniform approach to rent control.

Finally, in line with sentiments expressed in the decision as to traffic cameras in *City of Dayton v. State of Ohio*, 151 Ohio St.3d 168, 2017-Ohio-6909, the proposed amendment sets forth the “overriding

statewide interest” in a uniform approach to rent control, and rationally relates the express preemption provision to that purpose.

Conclusion

In view of these considerations, the proposed amendment of Chapter 5321 would become an integral part of a general law of the State of Ohio, consistent with the home rule provisions of the Ohio Constitution, and enforceable as an express preemption of local rent control measures.

Thank you for allowing me the opportunity to offer testimony today in support of Substitute House Bill 430. I would be glad to respond to any questions that you may have.