

In the
Supreme Court of Ohio

CITY OF LIMA, : Case No. 2008-0128
: :
Plaintiff-Appellee, : On Appeal from the
: : Allen County
v. : Court of Appeals,
: : Third Appellate District
STATE OF OHIO, : :
: : Court of Appeals Case
Defendant-Appellant. : No. 1-07-21
: :

**MERIT BRIEF OF
DEFENDANT-APPELLANT STATE OF OHIO**

ANTHONY L. GEIGER* (0006150)
Director of Law
**Counsel of Record*
City of Lima, Ohio
209 North Main Street
Lima, Ohio 45801
419-221-5183
419-221-5176 fax

Counsel for Plaintiff-Appellee
City of Lima

NANCY H. ROGERS (0002375)
Attorney General of Ohio

WILLIAM P. MARSHALL* (0038077)
Solicitor General
**Counsel of Record*

ROBERT J. KRUMMEN (0076996)
Deputy Solicitor

MICHAEL L. STOKES (0064792)
Assistant Solicitor

PEARL M. CHIN (0078810)
SHARON A. JENNINGS (0055501)

Assistant Attorneys General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

wmarshall@ag.state.oh.us

Counsel for Defendant-Appellant
State of Ohio

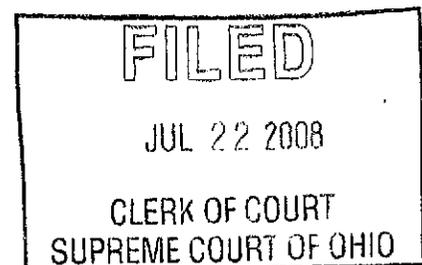


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INTRODUCTION

The General Assembly enacted R.C. 9.481 (the “Freedom of Residency Act” or “FRA”) in 2006 to protect the rights of municipal employees to live where they choose and to guard against the fundamental unfairness that results when municipal residency restrictions are imposed on city employees and their families. In so doing, the General Assembly exercised its expansive powers under Article II, Section 34 to provide for the “comfort, health, safety, and general welfare” of employees. As this Court has repeatedly explained, the General Assembly’s authority under Section 34 is broad and applies to such important topics as pension rights, sick and disability leave, and the right to engage in collective bargaining. See, e.g., *Am. Assn. of Univ. Professors v. Central State Univ.* (1999), 87 Ohio St. 3d 55 (“*AAUP*”) (work hours); *City of Rocky River v. State Employment Relations Bd.* (1989), 43 Ohio St. 3d 1 (“*Rocky River IV*”) (arbitration in the Ohio Public Employees’ Collective Bargaining Act); *State ex rel. Bd. of Trustees of Pension Fund v. Bd. of Trustees of Relief Fund* (1967), 12 Ohio St. 2d 105 (pensions).

Nonetheless, the Third Appellate District mistakenly limited the scope of Section 34 to “working environment conditions” and economic legislation. *City of Lima v. State* (3d Dist.), 2007 Ohio App. Lexis 5492, 2007-Ohio-6419, ¶¶ 35, 60, attached as Appendix Ex. A. This unnecessarily limited reading of Section 34 puts more than a single statute at stake. By imposing a “working environment conditions” test on the General Assembly’s power to legislate under Section 34, the appeals court’s decision not only undermines the Court’s previous decisions, but also may restrict the General Assembly’s power to further protect or provide for public employees on matters that may apply outside an employee’s particular working place, including ethics rules and conflict of interest regulations.

The Third District also erred in concluding that the FRA was vulnerable to a home rule challenge. First, that the General Assembly enacted the FRA under its Section 34 powers is

dispositive of the issue. The Ohio Constitution specifically provides that “no other provision of the Ohio Constitution impairs or limits [Article II, Section 34] power,” including the home rule provisions of Section 3, Article XVIII. Art. II, § 34. Because the Freedom of Residence Act is properly promulgated under Article II, Section 34, the home rule issue may not be reached and the FRA must be upheld.

Second, even if the Court decides that the General Assembly did not appropriately enact the FRA under its Section 34 powers, the Freedom of Residency Act still does not violate home rule. Any home rule challenge must first resolve whether the local ordinance is an exercise of local police power or of local self-government. *Am. Fin. Servs. Assn. v. City of Cleveland*, 112 Ohio St. 3d 175, 2006-Ohio-6043, ¶ 29 (“*AFSA*”). The answer to this question is important because of this Court’s dichotomous treatment of local police power versus local self-government ordinances. If an ordinance is a matter of local police power, then the home rule analysis moves to the *Canton* four-prong general law test (as the Third District erroneously did here). *Id.* at ¶ 27; see *City of Canton v. State*, 95 Ohio St. 3d 149; 2002 Ohio 2005. On the other hand, if an ordinance is a matter of self-government, the analysis asks only whether the issue is a purely local concern or a statewide concern. *Id.* at ¶ 29. In this case, all parties recognize that Lima’s ordinance involves an issue of self-government. The lower court should therefore have applied the statewide concern doctrine. Unfortunately, the Third District erred when it instead applied the analysis applicable to ordinances enacted as local police powers.

The FRA must be upheld under the statewide concern doctrine. The doctrine provides that the powers of local self-government must yield to state statutes regulating issues of statewide concern. See *AFSA*, 2006-Ohio-6043 at ¶¶ 27-29. Here, Lima’s residency requirement, along with all the other residency requirements throughout Ohio, affects such statewide concerns as the

right of persons to live where they choose, school funding and other educational resource issues, and tax revenues. Moreover, the State has an important statewide interest in ensuring fairness in the conditions of employment imposed on public-sector employees. Because the FRA regulates issues of great statewide concern, Lima's ordinance must give way and the Third District's decision should be reversed.

For these reasons and others set forth below, the Court should reverse the appeals court's decision and uphold the FRA as a valid enactment under Section 34 that is not limited by municipal home rule. Alternatively, even if the FRA is deemed to implicate home rule, the Court should uphold the law because residency restrictions involve matters of statewide concern, and therefore the FRA takes precedence over Lima's ordinance.

STATEMENT OF FACTS

A. Lima enacted Ordinance 201-00 to require permanent municipal employees to reside within its corporate boundaries.

In October 2000, the City of Lima adopted an ordinance that "established a requirement for persons appointed by the Mayor as employees of the City on and after the date of passage of this ordinance, that as a condition of permanent employment with the City all such employees shall live in a primary permanent residency within the corporate boundaries of the municipality." City of Lima Ordinance 201-00, Section 1 (App. Ex. B) ("Lima's residency requirement"). According to the testimony of Mayor David J. Berger, Lima's residency requirement was enacted to promote societal and economic benefits to the city and its redevelopment efforts. *City of Lima*, 2007-Ohio-6419 at ¶ 77. Lima's ordinance resembled residency requirements enacted by other localities throughout the State.

B. The General Assembly enacted the Freedom of Residence Act to prohibit political subdivisions from requiring full-time employees to reside in a specific area of the state.

In light of several local residency requirements, the General Assembly in January 2006 enacted the Freedom of Residence Act, which generally prohibits any political subdivision from requiring its permanent full-time employees, as a condition of employment, to reside in any specific area of the State. The General Assembly recognized that “employees of political subdivisions of this state have the right to reside any place they desire.” R.C. 9.481(C). To balance this right of employees with the need for adequate response times in emergencies, however, the Act permitted local governments to require residency “either in the county where the political subdivision is located or in any adjacent county in this state.” R.C. 9.481(B)(2)(b).

In enacting the statute, the General Assembly declared its intent to recognize two aspects of the Ohio Constitution. First, it recognized the “inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I.” 126th General Assembly, Sub. S.B. No. 82, Section 2(A) (App. Ex. C). Second, it noted that under Section 34 of Article II, “laws may be passed providing for the comfort, health, safety, and general welfare of all employees, and that no other provision of the Ohio Constitution impairs or limits this power,” including the home rule provisions of Section 3, Article XVIII. *Id.*, Section 2(B).

C. The trial court held that R.C. 9.481 was a matter of general and statewide concern and consistent with home rule.

Three weeks after the FRA became effective, the City of Lima sued the State in the Allen County Common Pleas Court, seeking an order declaring the statute unconstitutional. *City of Lima*, 2007-Ohio-6419 at ¶ 5. On cross motions for summary judgment, the trial court held that the General Assembly’s constitutional authority, under Section 34 of Article II, superseded the City of Lima’s home-rule powers. *Id.* at ¶¶ 12-14. The trial court found residency requirements

to be a matter of general and statewide interest that trump Lima's municipal home-rule power. Allen County Court of Common Pleas Op. at 12 (App. Ex. D); *City of Lima*, 2007-Ohio-6419 at ¶ 15. Finally, the trial court concluded that, even under a home rule challenge, the statute would prevail over the City of Lima's conflicting municipal ordinance. *City of Lima*, 2007-Ohio-6419 at ¶ 17.

D. The appeals court's narrow reading of Article II, Section 34 limits the General Assembly's authority to enact legislation related to "working environment conditions."

The Third District Court of Appeals disagreed with all of the trial court's conclusions. The court began its analysis by considering the General Assembly's legislative power to pass laws "providing for the comfort, health, safety, and general welfare of all employees" under Article II, Section 34. *Id.* at ¶ 27. Lima argued that "employees," as used in Section 34, "means employees acting within the scope of their employment (i.e.,] within the working environment)." *Id.* at ¶ 28. The State, conversely, maintained that the section refers to the status of being an employee, which transcends any particular locus.

The appeals court applied the *noscitur a sociis* canon of construction to the text of Section 34. Using this canon, the court determined that the clauses allowing the legislature to regulate hours of labor and establish a minimum wage "address [only] working terms and conditions within the working environment context." *Id.* at ¶ 34. The appeals court then imposed the same construction on the section's third clause, stating: "Common sense dictates that the words 'comfort,' 'health,' and 'safety' relate to working environment conditions. Moreover, theses [*sic*] terms, like 'general welfare,' are followed by the limiting term 'employees.' We, therefore, should interpret 'general welfare' to be a grant of legislative authority for laws affecting the employees' work environment conditions." *Id.* at ¶ 35.

The court gleaned the same result from its reading of the records of the 1912 constitutional convention. *Id.* at ¶ 46. Turning to the case law applying Section 34, the court found that it, too, related to the work environment. In the court’s view, even the statewide public employee pension system fit into this mold because, though pension benefits are “realized after the employee is no longer in the working environment,” they “are calculated based on an employee’s wages and years of service.” *Id.* at ¶ 56.

The appeals court concluded that “laws enacted pursuant to Section 34’s general welfare clause must, at a minimum, have *some* nexus between their legislative end and the working environment.” *Id.* at ¶ 63. Characterizing the legislative end of the Freedom of Residence Act as “restricting political subdivisions from requiring residency as a condition of employment,” and finding no nexus between that purported end and “the working environment,” the court held that the FRA was “not validly enacted pursuant to Article II, Section 34 of the Ohio Constitution.” *Id.*

E. The court of appeals held that the General Assembly’s enactment of the FRA violated Lima’s home rule power.

The appeals court decided that Section 34 did not immunize the statute from home-rule analysis. In rejecting the State’s argument that R.C. 9.481 addressed an issue of statewide concern and therefore trumps Lima’s municipal home rule powers, the appeals court first correctly stated that “the statewide concern doctrine is *part* of the *Canton* three-prong preemption test.” *City of Lima*, 2007-Ohio-6419 at ¶ 69 (citing *AFSA*, 2006-Ohio-6043 at ¶ 30). The court then, however, applied the *Canton* four-prong general law test, which is applicable to ordinances of local police power—not ordinances of self-government.

Using that test, the appeals court determined that the Freedom of Residence Act “clearly purports ‘to limit the legislative powers of a municipal corporation,’” *id.* at ¶ 72, without serving

an overriding state interest. *Id.* at ¶¶ 73-76. The appeals court then concluded that the FRA is not a “general law” under *Canton* and, therefore, violates the City of Lima’s home rule powers under Section 3, Article XVIII of the Ohio Constitution. *Id.* at ¶ 84. Because this ruling disposed of the case, the appeals court did not reach Lima’s third issue, which questioned whether the statute violates the Uniformity Clause of the Ohio Constitution. *Id.* at ¶ 86.

This timely appeal followed.

ARGUMENT

Appellant State of Ohio’s Proposition of Law No. 1:

R.C. 9.481 is constitutional legislation enacted for the comfort, health, safety, and general welfare of employees under Article II, Section 34 of the Ohio Constitution.

At first blush, this case presents itself as a home rule challenge involving municipal residency requirements. But this case is not a home rule case. Rather, this case addresses the scope of the General Assembly’s authority under Article II, Section 34 of the Ohio Constitution. And, if properly construed, the Court need not reach home rule because the General Assembly passed the FRA under its Section 34 powers.

Under Section 34, the General Assembly possesses supreme power to pass laws for “the comfort, health, safety and general welfare of all employees.” While the City of Lima and its amici may argue for a narrowing interpretation of Section 34, these arguments find no support in the language of the Constitution or this Court’s precedent. To the contrary, not only must local ordinances yield to the Assembly’s Section 34 power, but the Constitution explicitly provides that “*no other provision of the constitution shall impair or limit this power*”—including municipal home rule. Art. II, § 34 (emphasis added). Moreover, the Court has explicitly recognized Section 34’s primacy over home rule stating, “Section 3, Article XVIII of the Ohio Constitution, the home-rule provision, may not be interposed to impair, limit, or negate”

legislation enacted pursuant to Article II, Section 34.” *Rocky River IV*, 43 Ohio St. 3d 1 at syllabus, ¶ 2.

Article II, Section 34 of the Ohio Constitution sets out the General Assembly’s powers to legislate for the welfare of employees, establishing that “[l]aws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees.” In enacting the FRA, the General Assembly expressly stated its intent to exercise its powers under Section 34, declaring that its purpose was “to provide for the comfort, health, safety, and general welfare of . . . public employees.” 126th General Assembly, Sub. S.B. No. 82, Section 3. Because the General Assembly expressly intended to legislate under Section 34, the question before this Court is whether the FRA comes within the powers granted by that provision. If it does, the analysis ends and Lima’s residency requirement is invalid. As described below, the Freedom of Residency Act is a valid exercise of the General Assembly’s Section 34 powers, and the Court should uphold the FRA and reverse the Third District’s decision.

A. The General Assembly’s Article II, Section 34 power to provide for the comfort, health, safety, and general welfare of employees is broad and unambiguous.

This Court has “repeatedly interpreted Section 34, Article II as a broad grant of authority to the General Assembly, not as a limitation on its power to enact legislation.” *AAUP*, 87 Ohio St. 3d at 61 (citing *Rocky River IV*, 43 Ohio St. 3d at 14). “The language of Section 34 is so clear and unequivocal that resort to secondary sources, such as the constitutional debates, is actually unnecessary.” *Rocky River IV*, 43 Ohio St. 3d at 15. When constitutional language is unambiguous, courts must “enforce the provision as written,” without resort to legislative history or alteration by rules of construction. *Id.*

Given the well-settled breadth of Section 34's grant of authority, this Court has repeatedly rejected attempts by litigants to narrow the provision's scope. See, e.g., *Rocky River IV*, 43 Ohio St. 3d at 13 (rejecting an argument that Section 34 should be limited to "matters involving a minimum wage" in the course of a constitutional challenge to the arbitration provision of the Public Employee's Collective Bargaining Act); *AAUP*, 87 Ohio St. 3d at 61 (rejecting plaintiffs' challenge to a statute increasing teaching hours of staff at universities because the suggestion that Section 34 be interpreted to allow only laws benefiting employees conflicted with Section 34's "broad grant of authority" to the legislature). Properly following this Court's decisions, the Second District recently concluded that "[t]he effect [of the plain language of Article II, Section 34] is to render the grant of legislative power contained in Section 34, Article II plenary; no limitations to that power external to the language therein may be imposed." *City of Dayton v. State* (2d Dist.), 2008 Ohio App. Lexis 2179, 2008-Ohio-2589, ¶ 77 (upholding the FRA as properly enacted under Article II, Section 34) (App. Ex. E).

A broad reading of the General Assembly's Section 34 powers is also supported when the language of that provision is understood in its historical context. When adopted in 1912, laws—such as Section 34—providing for "comfort" and "health" and "safety" and "general welfare" were understood to be grounded in the state's broad police power. See, e.g., *Atlantic Coast R.R. Co. v. City of Goldsboro* (1914), 232 U.S. 548, 559 (describing the police power as "the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community."). The Court itself recognized that the scope of the General Assembly's power to legislate for "public safety, the public health and morals, and the general welfare [is] as broad as these conditions may require." *Bd. of Comm'rs of Champaign County v. Church* (1900), 62 Ohio St. 318, 344; see also *Ghaster Properties, Inc.*

v. Preston (1964), 176 Ohio St. 425, 435 (upholding the General Assembly's authority to regulate public highway signs for aesthetic reasons because the "general welfare of the public encompasses more than the public health, safety, and morals" and includes the public's "comfort, convenience, and peace of mind").

Similarly, in the context of employment, at the time of Section 34's adoption, it was generally understood that laws regulating the "health" and "safety" and "general welfare of employees" applied to more than just wage and hour laws and reach outside the working environment. See, e.g., *In re Berger* (Hamilton C.P. 1912), 22 Ohio Dec. 439, 441 (upholding statute prohibiting discharging or threatening to discharge an employee for "forming, joining, or belonging to a lawful labor organization" because the state's police power permitted legislation for "the safety, health, morals, and general welfare of the public" (quoting *Adair v. United States* (1908), 208 U.S. 161, 173)). Thus, the historical context of Section 34's enactment also supports the conclusion that the General Assembly's Section 34 power is expansive.

B. The Freedom of Residency Act falls within Article II, Section 34's grant of authority to provide for the comfort, safety, health, and general welfare of employees.

The General Assembly passed the FRA under its broad Section 34 powers. By providing employees of political subdivisions the freedom to choose where to live (subject to certain reasonable limitations), the FRA provides for the health, comfort, safety, and general welfare of those employees. See *City of Dayton*, 2008-Ohio-2589. When a city seeks to impose an unfair condition of employment that has nothing to do with an employee's qualifications, competency, or job performance, Section 34 empowers the General Assembly to step in on behalf of the general welfare of those employees.

Like other statutes upheld under Section 34 that regulate the general welfare of employees, the FRA protects employees from unfair terms and conditions of employment. See *City of*

Kettering v. State Employment Relations Bd. (1986), 26 Ohio St. 3d 50, 57 (state collective bargaining act upheld under General Assembly’s Section 34 powers to “enact legislation establishing *employee rights and protections*”) (Douglas J, concurring) (emphasis added). An employee’s general welfare is plainly affected by the terms and conditions she confronts at work, and the General Assembly’s regulation of residency requirements in other employment areas recognizes this self-evident connection. This logical connection is not lost on Ohio courts, as they have continually upheld the State’s authority to regulate residency requirements. See *City of St. Bernard v. State Emp. Relations Bd.* (1st Dist. 1991), 74 Ohio App. 3d 3, 6 (determining that a residency requirement is a mandatory subject of collective bargaining); see also *Santiago v. City of Toledo* (6th Dist. Feb. 13, 1998), 1998 Ohio App. Lexis 465 (residency requirements are a condition of employment and are subject to collective bargaining). As these decisions recognize, the General Assembly’s determination to legislate in the area of residency restrictions reflects its intention to regulate, under Section 34, for the general welfare of employees.

The above-cited cases—*Rocky River IV*, *Kettering*, and *City of St. Bernard*—all demonstrate that under Section 34, the General Assembly has authority to enact laws that regulate employer-employee labor relations and to ensure the fairness of terms and conditions that public employers impose on employees. Residency requirements are employment conditions that unmistakably affect the general welfare of employees. As such, the FRA is a valid exercise of the General Assembly’s Section 34 powers, and the decision below should be reversed.

C. The General Assembly’s Section 34 power is not limited to workplace conditions or to economic legislation.

As discussed above, Section 34 grants the General Assembly broad authority to regulate the general welfare of employees. Nonetheless, the lower court improperly created, out of whole

cloth, two limitations on this power. First, the court insisted that the General Assembly could only address actual “workplace conditions,” and it stated that an employee’s residency fell outside that limit. Second, the court insisted that the General Assembly could pass only “economic legislation,” and that the choice of residency did not qualify as such. Because both of these limitations are inconsistent with this Court’s precedent, the decision below should be reversed.

1. Limiting the General Assembly’s power to protect employees’ general welfare to workplace conditions undercuts this Court’s precedent and harms the public welfare.

Article II, Section 34 of the Ohio Constitution grants the General Assembly broad authority to regulate employees’ “health, safety, and general welfare,” and numerous laws have been passed to that end. By narrowly construing Section 34, the Third District’s decision not only is inconsistent with both this Court’s and its own precedent, but also threatens the ability of the General Assembly to protect the public welfare adequately.

The Court’s decisions clearly indicate that Section 34 is not limited to regulation of workplace conditions only. See, e.g., *Rocky River IV*, 43 Ohio St. 3d at 13-16; *AAUP*, 87 Ohio St. 3d at 61-62. In *Rocky River IV*, the appellant city argued that Section 34 was intended to provide the General Assembly with the power to regulate only a minimum wage. The Court rejected this argument. Instead, the Court upheld the mandatory arbitration provision passed by the General Assembly as “indisputably concerned with the ‘general welfare’ of employees,” and therefore a valid exercise of the legislative function under Section 34. *Rocky River IV*, 43 Ohio St. 3d at 13; see also *Dayton v. State of Ohio*, 2008-Ohio-2589, ¶¶ 60-61 (upholding R.C. 9.481 as properly enacted within the scope of R.C. 9.481 based upon *Rocky River IV* and *AAUP*).

Rather than following this Court’s decision in *Rocky River IV*, the Third District instead adopted the position taken by the dissenters in that case. See *Lima*, 2007-Ohio-6419, ¶ 54. In

Rocky River IV, Justice Wright expressed his dissenting view that, based on the debates, the drafters intended to limit the General Assembly specifically to “wages, hours, and sanitary conditions in industry.” *Rocky River IV*, 43 Ohio St. 3d at 28, n. 35, 35 (Wright, dissenting). The majority expressly rejected that view, finding that if Section 34 were limited to minimum wage laws, “almost half of the forty-one words contained in this section must be regarded as mere surplusage.” *Rocky River IV*, 43 Ohio St. 3d at 15-16; see also *Dayton v. State of Ohio*, 2008-Ohio-2589, ¶¶ 49-50, 57 (rejecting the view adopted by the dissent in *Rocky River IV*).

The Court took a step further in *AAUP*, explicitly stating that “[t]his court has repeatedly interpreted Section 34, Article II as a broad grant of authority to the General Assembly.” 87 Ohio St. 3d at 61. In rejecting a narrow construction of Section 34, the Court set out a nonexclusive list of laws passed under the General Assembly’s Section 34 power—including laws regulating more than workplace conditions:

The General Assembly routinely enacts legislation [under its Section 34 powers.] R.C. 3319.22, for instance, allows rules imposing continuing education requirements upon teachers; R.C. 109.801 requires police officers to undergo annual firearm training; public employees are limited by R.C. 102.03 in gifts they may receive; and classified employees are limited in their solicitations of political contributions under R.C. 124.57. Furthermore, employees of Head Start agencies and out-of-home child care employees must submit to criminal record checks (R.C. 3301.32 and 2151.86); teachers and other school employees may be required to undergo physical examinations in certain instances at the discretion of school physicians (R.C. 3313.71); an employee who contracts AIDS from a fellow employee has no cause of action in negligence against his employer (R.C. 3701.249); and board of health employees dealing with solid and infectious waste are required to complete certain training and certification programs (R.C. 3734.02).

Id. at 61.

In its recent related decision, the Second District recognized the error of the Third District’s limiting construction of Section 34. *City of Dayton*, 2008-Ohio-2589, ¶ 64. Examining the examples set forth in this Court’s *AAUP* decision, the Second District recognized that those

employment regulations “bear no more ‘nexus’ to the conditions of the ‘work environment’ than the residency provisions in R.C. 9.481.” *Id.* For example, the Second District noted that R.C. 102.03’s restrictions on various public employees for as long as twenty-four months after they leave public service fall well outside of workplace conditions. *Id.* Similarly, the Second District held that the immunity granted to employers for the negligent transmission of AIDS between employees bears no “significant nexus” to workplace conditions. *Id.* These regulations—like the FRA—have no direct relationship to the working environment yet have been upheld by this Court under Section 34. See *City of Dayton*, 2008-Ohio-2589 at ¶ 64 (citing *AAUP*, 87 Ohio St. 3d at 61).

In addition to the laws discussed above, the Court recognized that Section 34 authorizes the General Assembly to legislate on such basic and necessary issues as pensions and sick-leave. See *State ex rel. Bd. of Trustees of Pension Fund v. Bd. of Trustees of Relief Fund* (1967), 12 Ohio St. 2d 105 (police and firefighters disability and pension fund); *State ex rel. Horvath v. State Teachers Retirement Bd.* (1998), 83 Ohio St. 3d 67 (STRS fund); *State ex rel. Mun. Const. Equipment Operator’s Labor Council v. Cleveland*, 114 Ohio St. 3d 183, 2007-Ohio-3831 (sick leave). Pensions, sick leave, and mandatory arbitration are not directly related to an employee’s workday conditions. A pension constitutes income *after* retirement from employment. Sick leave confers upon employees the right to leave the workplace temporarily for health-related reasons. Mandatory arbitration dictates the process for negotiations between public employers and their employees. All of these regulations would fall if this Court adopts the Third District’s “workday environment” test.

The FRA cannot be distinguished from other laws upheld under Section 34. Residency, like pension, sick leave, and collective bargaining, is an aspect of employment that falls outside

an employee's actual workday conditions. However, as shown above, this Court upheld those statutes under the General Assembly's Section 34 powers despite the lack of a relation to workplace conditions. Like other statutes upheld under Section 34, the FRA protects a right related to one's status as a public employee—the right to choose where to live without forfeiting one's job.

The Third District's limited construction of the General Assembly's Section 34 power also threatens the State's extensive framework of ethics rules and conflict of interest regulations. See generally R.C. 102.01-.09. Ohio's ethics laws, for example, properly limit both an employee's ability to accept outside employment and to accept certain gifts for the purpose of preventing the appearance of and actual conflicts of interest. These regulations would not fall within the narrow "workplace conditions" scope of Section 34 as prescribed by the Third District because they regulate activities far beyond employment conditions. Such a limited interpretation of Section 34 thus directly threatens the long-standing structure of Ohio's ethics laws.

If this Court adopts the appeals court's view and revives the dissent's view that was rejected in *Rocky River IV*, such a drastic change would undermine a wide array of employment regulations that benefit the general welfare of both public employees and the public as a whole. This result is contrary to the explicit goals of Ohio's Constitution. Because the Third District improperly narrowed the scope of the General Assembly's Section 34 powers, the decision below should be reversed.

- 2. The General Assembly's power under Article II, Section 34 extends to all aspects of employees' "general welfare," not merely those benefits characterized as "economic."**

The Third District also erred in limiting Section 34 to only economic legislation. While this Court has held that Section 34 empowers the General Assembly to enact economic legislation, it has never held Section 34 applies exclusively for this purpose. See *State ex rel.*

Horvath, 83 Ohio St. 3d at 74 n.2 (“Economic legislation related to the welfare of employees, including pension funds for public employees, is granted favored status, under Section 34, Article II of the Ohio Constitution.”). The lower court misconstrued this “favored status” of economic legislation as exclusivity. *City of Lima*, 2007-Ohio-6419 at ¶ 60. There is nothing in this Court’s precedent mandating that Section 34 legislation be economic in nature. The language of Section 34 itself would prohibit such a result, as “laws providing for the . . . general welfare of employees” does not limit the General Assembly’s authority to economic legislation exclusively.

Moreover, the FRA would survive scrutiny as economic legislation. Indeed, the appeals court considered as part of the record below the testimony of the Mayor of the City of Lima, who cited the following economic reasons for its residency requirement:

- Produces the economic benefits that flow to a city from having resident employees which are of particular importance in an economically depressed city such as Lima;
- Promotes the value of real estate in the City;
- Promotes the development and maintenance of strong neighborhoods anchored by stable, wage-earning City employees and their families.

Id. at ¶ 77. By the Mayor’s own account, Lima is using its residency requirement to further its own economic interests. Indeed, as this evidence makes clear, the residency requirement amounts to nothing more than local economic protectionism.

The FRA is also properly considered economic legislation because of its economic impact on city employees and their families. Lima’s residency requirement forces public employees and their families, for example, to choose between continued employment with the City versus keeping or selling a house outside the City’s limits. That choice is an economic one: “Buying a house is the largest investment many consumers ever make.” *Conklin v. Hurley* (Fla. 1983), 428

So. 2d 654, 659. The FRA also protects the ability of working spouses to make the economic choice of working for two different cities, an option that would be foreclosed by Lima's residency restriction. Accordingly, because the FRA broadens the range of economic choices that public employees can make, it falls within the Third District's economic welfare test. In that way, the Freedom of Residence Act is no different than legislation providing for sick leave, pensions, or other economic benefits that employees enjoy outside the workplace.

Simply put, the General Assembly's Section 34 power to provide for the general welfare of employees is broad. And the Court's precedent makes clear that Section 34 legislation is not limited to workplace conditions or economic legislation. Because the General Assembly properly enacted the FRA under Section 34, the statute should be upheld. Further, the Court need not engage in home rule analysis, and the Third District's decision below should be reversed.

Appellant State of Ohio's Proposition of Law No. 2:

R.C. 9.481 does not unconstitutionally conflict with Lima's municipal home rule powers.

A. Because the FRA was enacted under the General Assembly's Section 34 powers, it cannot be challenged under the home rule amendment.

Section 34, adopted in 1912 at the same time as the home rule amendment, expressly provides that "no other provision of the constitution shall impair or limit this power." This Court has held that to mean that municipalities cannot avoid the application of statutes enacted under Section 34 by asserting the home rule amendment. *Rocky River IV*, 43 Ohio St. 3d 1 at syllabus, ¶ 2 ("Section 3, Article XVIII of the Ohio Constitution, the home-rule provision, may not be interposed to impair, limit, or negate" legislation enacted pursuant to Article II, Section 34.); see also *State ex rel. Bd. of Trustees of Pension Fund v. Bd. of Trustees of Relief Fund* (1967), 12 Ohio St. 2d 105, 106-07 (rejecting home rule challenge to statutes creating statewide

fund to provide pension and disability funds for police and firefighters). Thus, the conclusion that the FRA falls within the scope of Article II, Section 34's legislative authority moots any need for this Court to address Lima's home rule argument.

B. Even if the FRA is subject to home rule challenge, Lima's residency requirement must be analyzed as the exercise of its power of local self-government, and the doctrine of statewide concern controls.

Even if this Court finds that the FRA was not enacted under the authority of Article II, Section 34 (and it was), the statute comports with the home rule amendment because the interest of all public employees to live where they choose is a statewide concern that transcends Lima's alleged powers of self-government. At the outset, under home rule analysis, a local ordinance must be classified in one of two ways: it either addresses a matter of self-government or constitutes an exercise of local police power. See Ohio Const. Art. XVIII, Sec. 3. These two types of local ordinances (self-government and police powers) are distinct. *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191, 197. And this distinction is fundamentally important to the Court's home rule analysis. If an ordinance is a matter of local police power, then the home rule analysis moves to the *Canton* four-prong general law test. *AFSA*, 2006-Ohio-6043 at ¶ 27. On the other hand, if a municipal ordinance concerns a matter of self-government, the analysis asks only whether the issue is a purely local concern or a statewide concern. *Id.* at ¶ 29. In this case, all parties recognize that Lima's ordinance involves an issue of self-government, see *City of Lima*, 2007-Ohio-6419 at ¶¶ 65-66, and, therefore, the lower court should have applied the statewide concern doctrine.

When a city exercises its powers of self-government, the Court applies the statewide concern doctrine to determine if an ordinance constitutes a bona fide exercise of local self-government, or whether the ordinance intrudes on a matter of statewide concern that is properly regulated by the State. *AFSA*, 2006-Ohio-6043 at ¶¶ 27-29; see also *City of Reading v. Pub. Util.*

Comm'n of Ohio, 109 Ohio St. 3d. 193, 2006-Ohio-2181, ¶ 32. The Court has “never held that the powers of local self-government under Section 3 are unlimited.” *City of Reading*, 2006-Ohio-2181 at ¶ 32. While political subdivisions have home rule authority to regulate local matters, “even in the regulation of such local matters a municipality may not infringe on matters of general and statewide interest.” *Cleveland Elec. Illuminating Co. v. City of Painesville* (1968), 15 Ohio St. 2d 125, 129. Powers of local self-government must yield to state statutes regulating issues of statewide concern. See, e.g., *AFSA*, 2006-Ohio-6043 at ¶¶ 26-30 (holding that the doctrine of statewide concern applies to powers of local self-government); *City of Reading*, 2006-Ohio-2181 at ¶¶ 32-33 (providing that statewide concern doctrine limits all regulation of local matters, including alleged powers of local self-government). Thus, the outcome of any home rule analysis performed in this case turns on whether residence requirements intrude upon what has now become a matter of statewide concern.

The appeals court incorrectly concluded that the result in this case was controlled not by the statewide concern doctrine, but by the four-prong *Canton* general law test. *City of Lima*, 2007-Ohio-6419 at ¶ 69. But as has been noted, this Court expressly provided that the statewide concern test, and not the *Canton* general law test, applies in cases where a city alleges to exercise its power of local self-government. See, e.g., *AFSA*, 2006-Ohio-6043 at ¶¶ 23, 29 (distinguishing the case before the Court from a case involving the exercise of powers of local self-government and holding that doctrine of statewide concern applies to cases involving powers of local self-government); *Marich v. Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, ¶¶ 10-11 (outlining the different analysis that applies to powers of local self-government versus local police powers); *Phillips*, 168 Ohio St. at 197 (“The words, ‘as are not in conflict with general laws’ found in Section 3 of Article XVIII . . . modify the words ‘local

police, sanitary and other similar regulations’ but do not modify the words ‘powers of local self-government.’”).

The court below also erroneously concluded that the powers of local self-government are unlimited, relying on this Court’s decision in *AFSA. City of Lima*, 2007-Ohio-6419 at ¶ 67 (“[I]f Lima enacted its residency requirement under its local self-government power, the “analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction,’ and Lima prevails.”) (citation omitted). However, the *AFSA* Court explained that while the statewide concern doctrine did not apply to the case before it—a case regarding the exercise of concurrent police powers in the context of predatory lending—the doctrine remained relevant “in deciding, as a preliminary matter, whether a particular issue is not a matter of merely local concern, but is of statewide concern, and therefore not included within the power of local self-government.” *AFSA*, 2006-Ohio-6043 at ¶ 29. Furthermore, the Third District’s reasoning is directly contradicted by this Court’s holdings in other cases. See *City of Reading*, 2006-Ohio-2181 at ¶ 32-33 (providing that statewide concern doctrine limits all regulation of local matters, including alleged powers of local self-government). Thus, the Court’s well-established precedent provides that “even in the regulation of such local matters [of self-government] a municipality may not infringe on matters of general and statewide interest.” *Cleveland Elec. Illuminating Co.*, 15 Ohio St. 2d at 129.

C. The FRA does not violate the home rule amendment because Lima’s residency restriction impacts an area of statewide concern.

The validity of a state statute subject to a self-government home rule challenge turns on the doctrine of statewide concern. The statewide concern test asks whether an ordinance is truly limited to matters that affect only the municipality and its residents, or whether the ordinance has extraterritorial effects. *Id.* If the result of a municipal ordinance “affects only the municipality

itself, with no extraterritorial effects, the subject is clearly within the power of local self-government.” *Id.* However, if the impact of a local regulation is not confined to the particular municipality and “affects the general public of the state as a whole more than it does the local inhabitants the matter passes from what was a matter for local government to a matter of general state interest.” *Id.* Here, Lima’s ordinance requiring local residency is not purely a matter of local self-government because of its wide ranging effects on adjacent communities’ residents, tax revenues, and housing markets. As such, under the statewide concern doctrine, the FRA supersedes Lima’s local residency requirement.

This Court has held that statutes similar to the residency restrictions here are matters of statewide concern. Most notably, in *Kettering*, the Court applied the statewide concern doctrine to civil service legislation, holding that public employees’ collective bargaining is a matter of statewide concern. 26 Ohio St. 3d at 55 (explaining that “[w]hat the statewide concern doctrine perceives is that a comprehensive statutory plan is, in certain circumstances, necessary to promote the safety and welfare of all the citizens of this state”). The *Kettering* Court considered statutes governing public-sector labor relations, which were once locally regulated, to be matters now appropriate for statewide control. *Id.* at 56.

Here, Lima’s residency requirement closely resembles ordinances that this Court and the courts of other States have held to regulate matters of statewide concern. See *Uniformed Firefighters Ass’n v. City of New York* (N.Y. 1980), 50 N.Y. 2d 85, 90 (holding that the “the residence of [municipal employees], unrelated to job performance or departmental organization, is a matter of State-wide concern not subject to the home rule”); see also *Detroit Police Officers Ass’n v. City of Detroit* (Mich. 1974), 391 Mich. 44, 59-61 (holding that Detroit’s residency requirement is subject to the state’s collective bargaining act, and not under the city’s unilateral

control). While the city may retain control over hiring and promotion decisions related to qualifications of employment and job performance, the city's residency requirement bears no relationship to an employee's job performance. Rather it imposes conditions of employment unrelated to job performance, and those conditions have effects that reach far beyond city limits. By its own terms, the city's ordinance prevents non-residents from procuring employment in certain city positions. In addition, different cities may have different residency requirements, and varying requirements may adversely affect public employees who want to switch employers.

Furthermore, residency requirements like the City of Lima's also have a direct effect on housing markets statewide. As municipal employees are forced to reside in the cities where they are employed, those cities benefit economically, to the detriment of cities without such requirements. A collateral effect of the residency requirement is that the school districts of cities imposing residency requirements benefit in terms of student enrollment and an increased property tax base, thereby depriving neighboring communities of those same resources. Residency requirements have a significant effect on those who reside outside of the community, even if those communities themselves do not have residency requirements. Therefore, the Lima's residency requirement has significant extraterritorial effects and thereby constitutes a matter of statewide concern.

Finally, the lower court erred in concluding that the FRA does not regulate a matter of statewide concern and therefore violates the home rule amendment because, it said, a residency requirement does not implicate the constitutional rights of the employees. See *City of Lima*, 2007-Ohio-6419 at ¶¶ 75-76. That conclusion is irrelevant. The question is not whether employees have a constitutional right to choose their residence; the question is whether the General Assembly may create a statutory right for public employees to be free from local

residency requirements. And if a statute creating the freedom to choose residence vindicates a matter of statewide concern, or if local ordinances requiring residency have significant extraterritorial effects, then the statute prevails over local attempts to curtail that freedom.

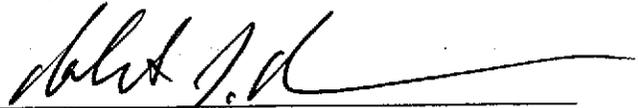
The FRA must trump Lima's residency requirement because, on matters of statewide concern, state laws take precedence over conflicting local self-government ordinances. As a result, the lower court's analysis was erroneous, and the decision below should be reversed.

CONCLUSION

For the reasons set forth above, this Court should uphold the constitutionality of the Freedom of Residence Act as a valid enactment under Article II, Section 34 of the Ohio Constitution. In the alternative, this Court should uphold the Freedom of Residence Act as a valid statutory enactment of statewide concern. For all of these reasons, this Court should reverse the decision of the Third District Court of Appeals and order that judgment be entered in favor of the State of Ohio.

Respectfully submitted,

NANCY H. ROGERS
Attorney General of Ohio



WILLIAM P. MARSHALL* (0038077)

Solicitor General

**Counsel of Record*

ROBERT J. KRUMMEN (0076996)

Deputy Solicitor

MICHAEL L. STOKES (0064792)

Assistant Solicitor

PEARL M. CHIN (0078810)

SHARON A. JENNINGS (0055501)

Assistant Attorneys General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

wmarshall@ag.state.oh.us

Counsel for Defendant-Appellant
State of Ohio

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of Defendant-Appellant State of Ohio was served by U.S. mail this 22nd day of July, 2008, upon the following counsel:

Anthony L. Geiger
Director of Law
City of Lima, Ohio
209 North Main Street
Lima, Ohio 45801

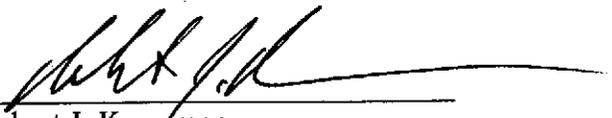
Counsel for Plaintiff-Appellee
City of Lima

Henry A. Arnett
Livorno and Arnett Co., LPA
1335 Dublin Road, Suite 108-B
Columbus, Ohio 43215

Counsel for Amicus Curiae
Ohio Association of Professional Fire Fighters

Paul L. Cox
Chief Counsel
Gwen Callender
Assistant Chief Counsel
Fraternal Order of Police of Ohio, Inc.
222 East Town Street
Columbus, Ohio 43215

Counsel for Amicus Curiae
Fraternal Order of Police of Ohio, Inc.



Robert J. Krummen
Deputy Solicitor

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IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
ALLEN COUNTY

A. S. STALEY-BURLEY
CLERK OF COURTS
ALLEN COUNTY, OHIO

CITY OF LIMA, OHIO,

PLAINTIFF-APPELLANT,

CASE NO. 1-07-21

v.

STATE OF OHIO,

OPINION

DEFENDANT-APPELLEE.

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Court

JUDGMENT: Judgment Reversed and Cause Remanded

DATE OF JUDGMENT ENTRY: December 3rd, 2007

ATTORNEYS:

ANTHONY L. GEIGER
City Law Director
Reg. #0006150
209 North Main Street, 6th Floor
Lima, Ohio 45801
For Appellant

FRANK M. STRIGARI
Assistant Attorney General
Reg. #0078377
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
For Appellee

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Case No. 1-07-21

PRESTON, J.

I. Factual Background

{¶1} Plaintiff-appellant, City of Lima (hereinafter “Lima”), appeals the Allen County Court of Common Pleas grant of summary judgment in favor of defendant-appellee State of Ohio (hereinafter “State”).¹ Since the trial court erred in finding R.C. 9.481 was validly enacted pursuant to Article II, Section 34 of the Ohio Constitution and meets the *Canton* test, we reverse and remand for further proceedings not inconsistent with this opinion.

{¶2} On November 2, 1920, Lima voters adopted a city charter pursuant to Section 3, Article XVIII of the Ohio Constitution. In 1974, section 72 of the Lima City Charter was amended to permit Lima City Council to determine by ordinance whether to establish a residency requirement for city employees.

{¶3} On October 23, 2000, Lima City Council passed Ordinance 201-00 pursuant to section 72 of the Lima City Charter, which “established a requirement for persons appointed by the Mayor as employees of the city on or after the date of passage of this ordinance, that as a condition of employment with the City all such employees shall live in a primary permanent residency within the corporate boundaries of the municipality.”

{¶4} On May 1, 2006, the General Assembly enacted R.C. 9.481 pursuant to

¹ Amicus curiae Local 334 of the International Association of Fire Fighters has also submitted a brief in support of the State of Ohio in this case.

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Section 34, Article II of the Ohio Constitution (hereinafter "Section 34"), which, except in specified circumstances, limited the ability of political subdivisions throughout Ohio to condition employment upon residency.

{¶5} On May 22, 2006, Lima filed an action for declaratory judgment and injunctive relief in the Allen County Court of Common Pleas against the State arguing that R.C. 9.481 is unconstitutional on several grounds. Cross motions for summary judgment were filed on December 15, 2006, with both parties responding on January 12, 2007.

{¶6} On February 16, 2007, the trial court granted the State's motion for summary judgment upholding the constitutionality of R.C. 9.481 and denied Lima's motion for summary judgment. On April 19, 2007, Lima appealed the trial court's grant of summary judgment to this court asserting three assignments of error.

II. Standard of Review

{¶7} We review a grant of summary judgment de novo. *Sharonville v. Am. Employers Ins. Co.*, 109 Ohio St.3d 186, 2006-Ohio-2180, 846 N.E.2d 833, ¶5, citing *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶8. Summary judgment is appropriate when "(1.) there is no genuine issue of material fact; (2.) the moving party is entitled to judgment as a matter of law; and (3.) it appears from the evidence that reasonable minds can come to but one conclusion when viewing the evidence in favor of the nonmoving party, and that conclusion is adverse to the nonmoving party." *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 671

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N.E.2d 241, citing *State ex. rel. Cassels v. Dayton City School Dist. Bd. of Edn.* (1994), 69 Ohio St.3d 217, 219, 631 N.E.2d 150; Civ.R. 56(C).

{¶8} Whether a statute is constitutional is a question of law reviewed de novo. *Wilson v. ACRS, Inc.*, 169 Ohio App.3d 720, 2007-Ohio-6704, 864 N.E.2d 682, ¶61; *Akron v. Callaway*, 162 Ohio App.3d 781, 2005-Ohio-4095, 835 N.E.2d 736, ¶23. De novo review is independent and without deference to the trial court's determination. *Wilson*, 2006-Ohio-6704, at ¶61. "[A]ll statutes are presumed constitutional, and the party challenging has the burden of proving otherwise" beyond a reasonable doubt. *State v. Boczar*, 113 Ohio St.3d 148, 2007-Ohio-1251, 863 N.E.2d 155, ¶9, citing *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, 38-39, 616 N.E.2d 163; *State ex rel. Jackman v. Cuyahoga Cty. Court of Common Pleas* (1967), 9 Ohio St.2d 159, 224 N.E.2d 906, 908-909 ("[W]hen an enactment of the General Assembly is challenged, the challenger must overcome a strong presumption of constitutionality."). All presumptions and applicable rules of statutory construction are applied to uphold a statute from constitutional attack. *State v. Dorso* (1983), 4 Ohio St.3d 60, 61, 446 N.E.2d 449; *State v. Stambaugh* (1987), 34 Ohio St.3d 34, 35, 517 N.E.2d 526.

{¶9} "[I]t is not the function of the reviewing court to assess the wisdom or policy of a statute but, rather, to determine whether the General Assembly acted within its legislative power." *Austintown Twp. Bd. of Trustees v. Tracy* (1996), 76 Ohio St.3d 353, 356, 667 N.E.2d 1174, citing *State ex rel. Bishop v. Mt. Orab Village Bd. of Edn.* (1942),

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139 Ohio St. 427, 438, 40 N.E.2d 913; *Primes v. Tyler* (1975), 43 Ohio St.2d 195, 331 N.E.2d 723.

{¶10} “The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body.” THE FEDERALIST No. 78 (Alexander Hamilton) (Clinton Rossiter Ed. 1961) 468-469. “The principle that courts are not the creators of public policy and should not decide cases based on disagreement with a legislature has guided courts since the creation of the American judicial system.” *Holeton v. Crouse Cartage Co.* (1992), 92 Ohio St.3d 115, 135, 748 N.E.2d 1111 (Moyer, C.J., dissenting).

III. Trial Court’s Ruling

{¶11} Although we review constitutional questions de novo, for clarification purposes and an otherwise thorough review we set forth the essential findings of the trial court.

{¶12} This appeal follows the Allen County Court of Common Pleas grant of summary judgment in favor of the State of Ohio. The trial court set forth the following issue for its review:

[W]hether * * * O.R.C. 9.481 as enacted by the General Assembly which provides employees of Ohio’s political subdivisions with freedom to choose where they want to live, is unconstitutional because it conflicts with Section 3, Article XVIII of the Ohio Constitution * * *

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Lima v. Ohio (Feb. 15, 2007), Allen C.P. No. CV2006-0518, at 4. The trial court first considered the relevance of the *Canton* test and a traditional home rule analysis. *Id.* at 6. The trial court concluded that laws validly passed pursuant to Article II, Section 34 of the Ohio Constitution cannot be impaired by the Home Rule Amendment; and therefore, a traditional home rule analysis was unnecessary. *Id.* at 10, citing *City of Rocky River v. State Employment Relations Bd., et al.* (1989), 43 Ohio St.3d 1, 539 N.E.2d 103.

{¶13} The trial court then concluded that R.C. 9.481 was validly enacted pursuant to Section 34. The trial court decided that Lima's residency requirement is a condition of employment. *Id.* at 11, citing *City of St. Bernard v. State Emp. Relations Bd.* (1991), 74 Ohio App.3d 3, 6. As a condition of employment, the trial court reasoned, R.C. 9.481's regulation of residency requirements concerned the general welfare of public employees; and therefore, the law was validly enacted pursuant to Section 34. *Id.*

{¶14} After it concluded that R.C. 9.481 was validly enacted pursuant to Section 34 and superseded the Home Rule Amendment, the trial court examined R.C. 9.481 under the traditional *Canton* Home Rule analysis in the alternative.

{¶15} Prior to conducting a *Canton* analysis, the trial court found that residency requirements are an issue of statewide concern due to the extraterritorial effects that such requirements have on other Ohio communities. *Id.* at 12. The court then concluded that since residency requirements are a matter of state-wide concern, the State's power to regulate superseded the municipality's right to home rule. *Id.* at 12-13, citing *Cleveland*

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Electric Illuminating Co. v. City of Painesville (1968), 15 Ohio St.2d 125, 129;

Uniformed Firefighters Assn., et al. v. City of New York, et al. (1980), 50 N.Y.2d 85.

{¶16} Finally, the trial court concluded that even if it applied the *Canton* test, the State of Ohio still prevailed. *Id.* at 13. Applying the four-part *Canton* test, the trial court reached the following conclusions:

1. **Generally permitting employees of political subdivisions through [sic] the State of Ohio to live where they choose to live while providing political subdivisions with a process for enacting specific exceptions, constitutes a statewide and comprehensive legislative enactment in and of itself.**
2. **O.R.C. 9.481 operates uniformly throughout the State of Ohio because the statute applies across the State to all included within the statute's operative provisions.**
3. **Subject of providing employees of political subdivisions throughout the State of Ohio with the freedom to choose where they want to live is of a general nature for all of these employees. Specifically, the law's subject not only affects employees of the City of Lima by providing them with the freedom to choose where they want to live, but it also affects employees of every other political subdivision within the State of Ohio in the same manner.**
4. **O.R.C. 9.481 qualifies as an exercise of police power. State's police power embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or public health. (Quoted from *Wessel v. Timberlake* (1916), 95 Ohio St. 21, 34)**
5. **O.R.C. 9.481 proscribes a rule of conduct on citizens generally. As noted by the State, the statute applies to political subdivisions, but "the practical effect of the legislation and common sense tells us 'that O.R.C. 9.481 has a direct impact on the conduct of employees of political subdivisions generally'" *City of Canton, supra*, at 155.**

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For these reasons, the trial court concluded that R.C. 9.481 was constitutional under both *Canton* and the doctrine of statewide concern in addition to its earlier conclusion that R.C. 9.481 superseded Lima's ordinance under Section 34.

{¶17} We note that several other trial courts throughout the State have concluded that R.C. 9.481 is constitutional and supersedes municipal ordinances to the contrary for similar reasons. *City of Toledo v. State* (July 27, 2007), Lucas C.P. No. CI06-3235; *City of Dayton v. State* (June 6, 2007), Montgomery C.P. No. 06-3507; *City of Akron v. State* (Mar. 30, 2007), Summit C.P. No. CV 2006-05-2759; *City of Cleveland v. State* (Feb. 23, 2007), Cuyahoga C.P. No. 06-590463; *Am. Fedn. of State, Cty., & Mun. Emps. Local #74 v. Warren* (Sept. 14, 2007), Trumbull C.P. No. 2006 CV 01489. The Ohio Court of Appeals has not decided the constitutionality of R.C. 9.481.

IV. Analysis

{¶18} Lima asserts three assignments of error for our review. Since assignment of error two must be resolved before assignment of error one becomes relevant, we will analyze it first. Our disposition of assignments of error one and two renders assignment of error three moot.

{¶19} In its first assignment of error, Lima argues that the trial court incorrectly determined that R.C. 9.481 is constitutional pursuant to the doctrine of statewide concern. Lima contends that the trial court did not apply the doctrine of statewide concern within the context of the *Canton* test. 95 Ohio St.3d 149, 766 N.E.2d 963. Under a proper

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formulation of the *Canton* test, argues Lima, R.C. 9.481 is not a “general law”; and therefore, does not supersede Lima’s home rule authority.

{¶20} The State argues that the proper analysis for determining whether R.C. 9.481 is constitutional is not *Canton*’s home rule analysis; but rather, the analysis outlined in *Central State University* and *Rocky River IV*. 87 Ohio St.3d 55, 717 N.E.2d 286; 43 Ohio St.3d 1, 539 N.E.2d 103. The State claims that *Central State University* and *Rocky River IV*, like this case and unlike *Canton*, involved laws enacted pursuant to Article II, Section 34 of the Ohio Constitution.

{¶21} Lima agrees with the State that laws validly enacted pursuant to Article II, Section 34 of the Ohio Constitution supersede local ordinances passed pursuant to Article XVIII, Section 3 of the Ohio Constitution, the ‘Home Rule’ authority. However, Lima alleges in its second assignment of error that R.C. 9.481 was not validly enacted pursuant to Article II, Section 34 of the Ohio Constitution.

{¶22} Therefore, the first issue before this Court is whether R.C. 9.481 was validly enacted pursuant to Article II, Section 34 of the Ohio Constitution. If the answer to this inquiry is ‘yes,’ the parties agree that R.C. 9.481 supersedes Lima Ordinance No. 201-00; if the answer is ‘no,’ then the *Canton* traditional home rule analysis applies, and Lima’s first assignment of error becomes relevant.

ASSIGNMENT OF ERROR NO. II

THE TRIAL COURT ERRED IN CONCLUDING R.C. 9.481 WAS A VALID ENACTMENT PURSUANT TO ARTICLE II, SECTION 34 OF THE OHIO CONSTITUTION.

{¶23} In its second assignment of error, Lima argues that R.C. 9.481 was not validly enacted pursuant to Article II, Section 34, because “Section 34 * * * address[es] employment issues directly related to the working environment.” The State counters that Section 34’s general welfare clause applies to “conditions of employment,” and since residency is one such condition, R.C. 9.481 is within Section 34’s grant of authority.

{¶24} At oral argument, Lima asserted that “conditions of employment” and “conditions for employment” are distinct issues, because the former means conditions within the working environment, whereas the later means qualifications for employment. Lima concedes that Section 34’s grant of authority covers working environment conditions, but disagrees that it extends to qualifications for employment. We agree with Lima that Section 34’s language, legislative history, and case law support a more limited grant of legislative authority than the State presents.

A. Section 34’s Plain Language

{¶25} “Generally speaking, in construing the Constitution, we apply the same rules of construction that we apply in construing statutes.” *State v. Jackson*, 102 Ohio St.3d 380, 2004-Ohio-3206, 811 N.E.2d 68, ¶14. “[O]ur inquiry begins with the statutory text, and ends there as well if the text is unambiguous.” *State ex rel. Plain Dealer Publishing Co. v. Cleveland*, 106 Ohio St.3d 70, 2005-Ohio-3807, 831 N.E.2d 987, ¶38,

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quoting *Bed Roc Ltd., LLC v. United States* (2004), 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338.

{¶26} Article II, Section 34 of the Ohio Constitution provides:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.

Section 34's plain text provides four clauses. The first three are grants of legislative authority; the fourth is a supremacy clause. First, Section 34 grants the General Assembly the authority to pass laws "fixing and regulating the hours of labor" (hereinafter "hours clause"). Second, Section 34 grants the General Assembly authority to pass laws "establishing a minimum wage" (hereinafter "minimum wage clause"). Third, Section 34 grants the General Assembly authority to pass laws "providing for the comfort, health, safety, and general welfare of all employees" (hereinafter "general welfare clause"). Fourth, Section 34 provides that "no other provision of the constitution shall impair or limit this power" (hereinafter "supremacy clause").

{¶27} Lima argues that the general welfare clause grants the General Assembly authority to pass laws addressing "employment issues directly related to the working environment." The general welfare clause states laws may be passed "providing for the comfort, health, safety, and general welfare of employees." The general welfare clause, thus, provides that the General Assembly may pass laws providing for the 'general welfare.' General welfare means "the public's health, peace, morals, and safety." Black's

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Law Dictionary (8th Ed. Rev.) 1625; *Mirick v. Gims* (1908), 79 Ohio St.174, 179, 86 N.E.880. Usually, the term 'general welfare' is associated with the State's police powers, which are broad and discretionary. *Gims*, 79 Ohio St. at 179.

{¶28} The general welfare clause's language is, however, limited by subject matter. The general welfare clause's plain language requires that the General Assembly enact laws providing for the 'general welfare' 'of employees' (emphasis added). Lima's assignment of error, thus, raises the issue of whether the term 'employees' in Section 34 means employees acting within the scope of their employment (i.e. within the working environment) or whether 'employees' refers to the status of being an employee, which transcends any particular locus. In other words, does the term 'employees' refer to the status of being an employee twenty four hours per day, which attaches at hiring and sheds at firing ('employee' in its broadest sense), or does the term have a more limited meaning, which is intricately tied to a particular locus; here, the work environment. If the later interpretation is correct, the plain language would support finding that laws passed pursuant to Section 34's general welfare clause must address issues related to the employees' working environment as Lima argues. If the former interpretation is correct, then the plain language would support finding that laws passed pursuant to Section 34 can address issues beyond the employees' working environment as the State argues.

{¶29} The common law already recognizes the status-conduct distinction of an employee, for example, in tort law. The doctrine of respondeat superior² requires that an employer answer for torts committed by an employee. However, it is a settled tort law rule that an employer is only liable for the torts committed by an employee under the doctrine if the employee commits the tort while acting within the scope of his or her duties. See e.g. *Byrd v. Faber* (1991), 57 Ohio St.3d 56, 58, 565 N.E.2d 584. Consequently, the law recognizes that one may be an 'employee' in status, but not by conduct. Since other areas of law draw this distinction, the scope of the term 'employees' in Section 34 should be considered.

{¶30} Since the meaning of the term 'employees' is not defined within the text of the Section 34, we must interpret it consistent with common usage. R.C. 1.42; *State ex rel. Lee v. Karnes*, 103 Ohio St.3d 559, 2004-Ohio-5718, 835 N.E.2d 76, ¶23. Black's Law Dictionary defines 'employee' as:

A person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.

(8th Ed. Rev. 2004) 564. The American Heritage Dictionary defines 'employee' as: "[a] person who works for another in return for financial or other compensation." (2nd College Ed. 1985) 250. Neither definition provides a definitive conclusion regarding the scope of the term 'employee.' Both definitions refer to the status of being an employee, but

² 'Respondeat superior' is defined as: "The doctrine holding an employer or principal liable for the employee's or agent's wrongful acts committed within the scope of the employment or agency." Black's Law Dictionary (8th Ed. Rev. 2004) 1338.

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Black's Law definition also emphasizes employer control over work performance, which generally applies when an employee is acting within the scope of his or her employment.

{¶31} Since the common definition of 'employee' does not satisfactorily resolve its scope and, thus, the extent of the General Assembly's general welfare authority under Section 34, we must utilize other rules of statutory interpretation.

B. Section 34 & Noscitur a Sociis

{¶32} As the Ohio Supreme Court has noted, "the natural meaning of words is not always conclusive as to the construction of statutes." *Cleveland*, 2005-Ohio-3807, at ¶40. When the meaning of a word or phrase is unclear, the statutory doctrine of noscitur a sociis instructs a reviewing court to determine its meaning by the words immediately surrounding it. Black's Law Dictionary (8th Ed. Rev. 2004) 1087. See also, *Wilson v. Stark Cty. Dept. of Human Serv.* (1994), 70 Ohio St.3d 450, 453, 639 N.E.2d 105.

{¶33} The meaning of the Section 34's third clause, then, must be interpreted consistent with Section 34's first and second clauses, which, like the general welfare clause, provide grants of legislative authority. We agree with Lima, that if the general welfare clause's grant of authority is read consistent with the hours clause and the minimum wage clause, as the doctrine of noscitur a sociis instructs, then the general welfare clause grants the General Assembly authority to pass laws regulating work environment conditions.

{¶34} The general welfare clause of Section 34 grants the General Assembly authority to pass laws "providing for the comfort, health, safety, and general welfare of

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all employees.” As we noted *supra*, Section 34’s first clause grants the General Assembly the authority to pass laws “fixing and regulating the hours of labor,” and Section 34’s second clause grants the General Assembly authority to pass laws “establishing a minimum wage.” The hours and minimum wage clauses address working terms and conditions within the working environment context; they do not address qualifications for employment nor do they address issues outside of the working environment. Therefore, *noscitur a sociis* instructs that the general welfare clause should, likewise, be interpreted to address working environment conditions.

{¶35} Not only should we interpret the scope of the general welfare clause in the same context as the hours and minimum wage clauses, we should also interpret the term ‘general welfare’ *within* the third clause in relation to the words directly preceding and following it. Common sense dictates that the words ‘comfort,’ ‘health,’ and ‘safety’ relate to working environment conditions. Moreover, these terms, like ‘general welfare,’ are followed by the limiting term ‘employees.’ We, therefore, should interpret ‘general welfare’ to be a grant of legislative authority for laws affecting the employees’ work environment conditions.

{¶36} Thus, the doctrine of *noscitur a sociis* applied to the general welfare clause as a whole and to its components supports Lima’s argument that the clause grants legislative authority for the purpose of passing laws that affect the employees’ working environment conditions.

C. Section 34 Legislative History³

{¶37} “If the meaning of a provision cannot be ascertained by its plain language, a court may look to the purpose of the provision to determine its meaning.” *Jackson*, 2004-Ohio-3206, at ¶14, citing *Castleberry v. Evatt* (1946), 147 Ohio St. 30, 67 N.E.2d 861, paragraph one of the syllabus. “In determining legislative intent when faced with an ambiguous statute, the court may consider several factors such as circumstances under which the statute was enacted, the objective of the statute, and the consequences of a particular construction.” *Bailey v. Republic Engineered Steels, Inc.* (2001), 91 Ohio St.3d 38, 40, 741 N.E.2d 121, citing R.C. 1.49; *State v. Jordan* (2000), 89 Ohio St.3d 488, 492, 733 N.E.2d 601. Since we have determined that the term ‘employees’ is ambiguous, and we cannot ascertain the scope of authority granted under Section 34’s general welfare clause by looking at its plain language, we turn to the legislative history for guidance.

1. Historical Circumstances

{¶38} The early 1900’s were difficult times for American factory workers. The working environment often included long hours, low wages, and dangerous working conditions. MURLO, PRISCILLA & A.B. CHITTY, FROM THE FOLKS WHO BROUGHT YOU THE WEEKEND 145 (The New Press 2001). See also, generally, DERKS, SCOTT, WORKING AMERICANS 1880-1999, VOLUME 1: THE WORKING CLASS (Grey House Pub. 2000). Legislative efforts to remedy these woes were stifled by both state and federal

³ Much of the information herein was explained by the Court in *Rocky River*; however, a fresh look at the legislative history is prudent.

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courts striking down laws for violating the freedom to contract, which courts found as a substantive due process right. *Rocky River*, 43 Ohio St.3d at 26, fn.31-32 (Wright, J., dissenting). One of the most infamous of this line of cases was *Lochner v. New York*, wherein the U.S. Supreme Court struck down a New York law setting a sixty-hour-per-week maximum for work in bakeries. (1905), 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937.

{¶39} The Ohio Constitutional delegates were aware of both factory working conditions and the legal climate when Section 34 was passed. Several delegates recognized the working conditions at factories. Mr. Farrell commented at length about the intolerable working conditions in American factories when debating Section 34's minimum wage language:

But, gentleman of the Convention, I have been compelled to change my position on th[e] question [of minimum wage] in the last few years. When one considers the relentless war that has been waged against the trade union movement in this country, and the war of extermination that is now going on, and, in some instances, meeting with success, in putting some unions out of business, and the general application of "black list," all for no other reason than the piling up of capitalistic profits without any regard for justice in the premises, when we see the attempts making to build up industries on the foundations of *wages too low to admit of decent standards of family life, and hours of labor too long to admit of sufficient rest and relaxation for even moderate health, we are driven to the knowledge that it is time that a decent humane effort should be made to remedy this un-American condition.*

(Emphasis added). 2 PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF OHIO (1912) 1328.

{¶40} The delegates were also aware of the courts' hostile attitude toward progressive labor reform. Mr. Lampson asked Section 34's reporting committee, "[d]id

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you investigate the question as to whether that provision in the constitution relating to the passage of laws violating the obligation of contract has any bearing on this proposal?"

Id. at 1335. In response, Mr. Dwyer answered:

The courts have been deciding cases. Take that bake-shop case in New York [i.e. *Lochner*]. The [S]upreme [C]ourt there decided it was a question of private contract about the hours of labor. Our courts are becoming more progressive. They are catching the spirit of the time and we should put a clause in the constitution that will give the courts an opportunity to more liberally construe these matters than they have done in the past.

Id. Thus, it is evident from Section 34's debates that the constitutional delegates were well aware of both the working conditions in American factories and the legal climate with respect to labor reform.

2. Section 34's Objective

{¶41} On January 24, 1912, what is now Section 34 was introduced to the Ohio Constitutional Convention by Mr. Farrell, a delegate from Cuyahoga County, as Proposal No. 122, entitled "[r]elative to employment of women, children and persons engaged in hazardous employment." 1 PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF OHIO (1912) 106. On January 25, 1912, Proposal No. 122 was sent to the committee on labor. Id. at 118. On March 19, 1912, Proposal No. 122 was reported to the Convention with an amendment to insert:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.

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Id. at 755. The report was agreed to and the language amended. Id.

{¶42} On April 22, 1912, Proposal No. 122 was brought before the Convention and read a second time, whereupon some debate was heard. 2 PROCEEDINGS AND DEBATES, supra, at 1328. Mr. Farrell began his remarks noting that:

Since this proposal has been on the calendar I have heard some little objection to it, especially with reference to the clause which would permit the legislature to pass minimum wage legislation, and to that clause I intend to direct my remarks exclusively.

(Emphasis added). Id. On the other hand, Mr. Crites began his remarks noting that:

“[f]irst, you will note that this proposal is for the *sole purpose* of limiting the number of hours of labor; second, to establish a minimum wage for the wageworker.” Id. at 1331.

(Emphasis added). During his remarks in support of the proposal, Mr. Dwyer commented that employers ought to:

*** * * give your employees fair living wages, good sanitary surroundings during hours of labor, protection as far as possible against danger, a fair working day. Make his life as pleasant for him as you can consistent with his employment.**

(Emphasis added). Id. at 1332. Mr. Elson commented, “[i]t seems to me that the kernel of this proposal is a minimum wage.” Id. at 1336. On the other hand, Mr. Harris offered his support for Proposal No. 122, except the minimum wage language:

I am very anxious to support the remainder of the proposal, and if the authors will strike the words “minimum wage,” the proposal will receive not only the united support of this Convention but of the people of Ohio * * *

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Id. at 1337. Following this debate, the question was called and the proposal passed for the first time with eighty yeas and thirteen nays. Id. at 1338.

{¶43} On May 22, 1912, Proposal No. 122 was reported from the committee on Arrangement and Phraseology with an amendment to “Strike out the title and insert: ‘To submit an amendment by adding section 34, Article II of the constitution.—Welfare of employees’” and make other grammatical corrections. Id. at 1742.

{¶44} On May 23, 1912, Proposal No. 122 was read for the third time whereupon Mr. Harris offered an amendment to strike the words “minimum wage.” Id. at 1784. Debate on the amendment proceeded, but, ultimately, the amendment was tabled and the proposal passed for the second time with ninety-six yeas and five nays. Id. at 1786. Proposal No. 122’s language at that time read the same as Section 34 now reads. Id.

{¶45} On May 31, 1912, Proposal No. 122 was reported from the committee on Arrangement and Phraseology without amendment and passed a third and final time⁴ with eighty-seven yeas and eight nays. Id. at 1955.

{¶46} Reviewing the constitutional debates in light of the historical context preceding Proposal No. 122 (now Section 34), it is obvious that its purpose was to empower the General Assembly with legislative authority over: (1) the hours of labor; (2) a minimum wage; and (3) working environment conditions. Although the debates surrounding Proposal No. 122 focused on its minimum wage provision, it is clear from

⁴ Proposal No. 122 was passed three times, twice for committee report changes/amendments and one final time with all the amendments incorporated.

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our own review of the debates that the minimum wage provision was not Section 34's only subject. See also, *Rocky River*, 43 Ohio St.3d at 48-50. Mr. Dwyer and Mr. Harris's remarks demonstrate that Proposal No. 122's supporting delegates were also concerned with working environment conditions within Ohio.

{¶47} R.C. 9.481 does not fall within Section 34's original intent as evidenced by the historical context and the Convention proceedings. Rather, R.C. 9.481 attempts to regulate aspects of employment having nothing to do with the working environment—namely, where an employee resides after leaving work.

3. Interpretative Consequences

{¶48} We must also consider the affect of interpreting Section 34's general welfare clause beyond the working environment. *Bailey*, 91 Ohio St.3d at 40, citing R.C. 1.49; *Jordan*, 89 Ohio St.3d at 492. If the general welfare clause extends to issues outside the working environment, then what topic affecting employees would ever exceed its scope?

{¶49} Consider, for example, a law that would require employers to provide paid transportation to and from the work place. Although the law does not concern the hours of labor or a minimum wage, it certainly affects the 'general welfare' of employees. With soaring gas prices, congested traffic, and never-ceasing road construction, such a law would bring peace-of-mind to many employees across the State. If we agree with the State's interpretation of the general welfare clause (i.e. beyond the working environment) this proposed law must also prevail. Like R.C. 9.481, the law would affect 'employees'

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if we simply mean employees in status, as discussed in supra §IV, A, but it would not affect employees within the scope of their employment. We simply cannot agree that Proposal No. 122's supporting delegates intended its language to extend beyond the working environment.

D. Section 34 Case Law

{¶50} The State argues that case law supports a broad interpretation of the General Assembly's authority under Section 34. The State further argues that the cases relied upon by Lima for its argument that Section 34's general welfare clause is limited to issues directly related to the working environment expressly contradict this narrow interpretation. We agree, in part, and disagree, in part, with the State's interpretation of Section 34 general welfare case law.

{¶51} We agree with the State that Section 34 is a broad grant of legislative authority. *Am. Ass'n. of Univ. Professors v. Central State Univ.* (1999), 87 Ohio St.3d 55, 61, 717 N.E.2d 286 ("This court has repeatedly interpreted Section 34, Article II as a broad *grant* of authority to the General Assembly, not as a limitation on its power to enact legislation."); *Rocky River*, 43 Ohio St.3d at 13 ([Section 34] "constitutes a broad grant of authority to the legislature to provide for the welfare of all working persons, including local safety forces." (citing *State ex rel. Bd. of Trustees of Police & Fireman's Pension Fund v. Bd. of Trustees of Police Relief, and Pension Fund of Martins Ferry* (1967), 12 Ohio St.2d 105, 539 N.E. 2d 135)). However, the fact that the legislative

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grant of power is 'broad' does not mean that the power exceeds the amendment's language or original intent; therefore, a further analysis is required.

{¶52} An example of an appropriate analysis is found in *Central State*, supra. In that case, the American Association of University Professors (AAUP) challenged R.C. 3345.45, which required a mandatory ten percent increase in faculty classroom instruction at state universities. 87 Ohio St.3d at 56. In addition to its equal protection claims, AAUP argued that R.C. 3345.45 was outside the General Assembly's authority under Section 34. Id. at 60. AAUP argued that only laws *benefiting* employees could be passed pursuant to Section 34, and since R.C. 3345.45 *burdened* employees by increasing work hours, it was invalid. Id. The Ohio Supreme Court disagreed.

{¶53} The Ohio Supreme Court first noted that Section 34 powers are broad, as pointed out by the State. Id. at 61. However, the analysis did not stop there; instead, the Court then went back to Section 34's plain language and reasoned that, in effect, AAUP was adding limiting language that did not exist in Section 34:

AAUP's position would require Section 34 to be read as a limitation, in effect stating: "No law shall be passed on the subject of employee working conditions *unless it furthers* the comfort, health, safety and general welfare of all employees."

Id. Beyond the plain language analysis, the Court also examined the practical effect of AAUP's interpretation and found that it was problematic in the context of many existing laws other than R.C. 3345.45. Id. Therefore, the State's emphasis on the Ohio Supreme

Court's interpretation of Section 34 powers as 'broad,' although relevant, is not dispositive to the issue raised in this case; a further analysis is required.

{¶54} To begin with, we disagree with the State that *Pension Fund* or *Rocky River* 'expressly contradict' Lima's argument that Section 34's general welfare clause is limited to the working environment. On the contrary, these cases, read in their totality with an understanding of the laws at issue therein, lend support to Lima's argument that Section 34's general welfare clause is more limited in scope than the State alleges. Furthermore, consistent with the amendment's primary concern, Section 34 general welfare case law is limited to employee economic welfare.

{¶55} In *Pension Fund*, the municipality challenged several sections of R.C. Chapter 742 and specifically R.C. 742.26, which required that municipalities transfer their firefighter and police pension and relief fund assets into a state-controlled disability and pension fund. 12 Ohio St.2d at 106. The Ohio Supreme Court upheld R.C. 742.26 apparently under Section 34's general welfare clause.

{¶56} The State of Ohio argues that pensions and disability benefits, the subject of *Pension Fund*, are not directly related to the work environment; and therefore, the General Assembly's Section 34 general welfare authority extends beyond the work environment. The State reasons that pensions are received after retirement; and therefore, R.C. Chapter 742 is not related to the employee's working environment. Although pensions are received after retirement and, therefore, the effects of R.C Chapter 742 are realized after the employee is no longer in the working environment, R.C. Chapter 742

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pension and disability benefits are calculated based on an employee's wages and years of service. R.C. 742.3716; R.C. 742.39; Ohio Adm. Code 742-3-02. Consequently, R.C. Chapter 742 pension and disability benefits, upheld by the Ohio Supreme Court, are related to the working environment since they are calculated with respect to time and wages earned in the work place.

{¶57} Furthermore, pensions and disability benefits are nothing more than additional wages and compensation. Section 34's minimum wage clause was enacted to give the State the authority to establish a wage foundation, but certainly the State is free to go beyond that foundation. The State, as employer, is also able to contract with its employees regarding wages and compensation, and does so regularly. Nothing in Section 34 was meant to limit this preexisting State power.

{¶58} In *Rocky River v. State Emp. Relations Bd.*, the Ohio Supreme Court determined that the Public Employees' Collective Bargaining Act, R.C. Chapter 4117, which provided for binding arbitration, addressed the 'general welfare' of employees; and therefore, was a valid exercise of the General Assembly's Section 34 powers. 43 Ohio St.3d 1, 13, 539 N.E.2d 103. Like *Pension Fund*, R.C. Chapter 4117's legislative end was related to the work environment and the worker as an 'employee' working within the scope of his or her duties. The purpose of a collective bargaining agreement is to provide for agreed-upon wages, hours, benefits, and other terms and conditions of employment, and the binding arbitration provided by R.C. Chapter 4117 was enacted to reach such an

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agreement. R.C. 4117.10. Wages, hours, benefits, and other terms and conditions of employment impact the worker in the work place.

{¶59} Contrary to the State's arguments, both *Pension Fund* and *Rocky River* do suggest that laws enacted pursuant to Section 34's general welfare language must have, at minimum, *some* nexus between their legislative end and the working environment. R.C. 9.481, unlike the laws in *Pension Fund* and *Rocky River*, lacks any nexus between its legislative end and the working environment. Rather, R.C. 9.481 attempts to regulate where an employee may reside *outside* of the work place.

{¶60} More importantly, like *Rocky River* and *Pension Fund*, other cases interpreting Section 34's general welfare language are limited to legislation providing for the economic welfare of employees. See e.g. *State ex rel. Mun. Const. Equipment Operator's Labor Council v. Cleveland*, 114 Ohio St.3d 183, 2007-Ohio-3831, 870 N.E.2d 1174 (sick-leave benefits); *State ex rel. Horvath v. State Teachers Retirement Bd.* (1998), 83 Ohio St.3d 67, 697 N.E.2d 644 (teacher's savings plans); *Cincinnati v. Ohio Council 8, Am. Fedn. of State, Cty., and Mun. Emp.* (1991), 61 Ohio St.3d 658, 576 N.E.2d 745 (collective bargaining). In fact, Justice Cook has noted that "[e]conomic legislation related to the welfare of employees, including pension funds for public employees, is granted favored status under Section 34, Article II of the Ohio Constitution." *Horvath*, 83 Ohio St.3d at 74, fn. 2. One of the main purposes behind Section 34 was to address the economic welfare of employees who were earning meager

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wages during the 1900's. Consistent with Section 34's genesis, the Ohio Supreme Court has limited the scope of Section 34's general welfare clause to economic legislation.⁵

{¶61} R.C. 9.481, unlike the laws upheld under Section 34's general welfare clause, is not economic legislation. Consequently, upholding R.C. 9.481 under Section 34's general welfare clause would expand its scope beyond that recognized by the Ohio Supreme Court; and this, we decline to do. Furthermore, if the laws passed under Section 34's general welfare clause do not have *some* nexus between their legislative end and the working environment, we see no boundary to the State's power over the employee and employer. We cannot agree that the 1912 Constitutional delegates intended such a result.

E. Conclusion

{¶62} First, we determined that Section 34's plain language provides that laws may be passed providing for the 'general welfare' 'of employees.' Second, since the plain meaning of the term 'employees' can be more limited than simply signifying a status and is, therefore, ambiguous, we applied the statutory doctrine of *noscitur a sociis* and determined that the general welfare clause should be limited to the working environment. Third, we analyzed the legislative history, including the historical context in which Section 34 was passed and the debates, and again determined that Section 34's general welfare clause should be limited to the working environment. Fourth and finally, we analyzed Section 34 general welfare case law and determined that although Section

⁵ That is not to say that Section 34's *only* purpose was to address economic concerns or *only* minimum wages. As we have explained, the plain language of Section 34 also provides for: (1) hours of labor; (2) minimum wages (3) health; (4) comfort; and (5) safety. See *Rocky River*, 43 Ohio St.3d at 14-16.

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34 general welfare powers are broad, they are broad within the context of the working environment. Further, we noted that cases interpreting Section 34's general welfare clause are limited to laws affecting employee economic welfare.

{¶63} For all these reasons, we conclude that laws enacted pursuant to Section 34's general welfare clause must, at minimum, have *some* nexus between their legislative end and the working environment. Since R.C. 9.481 lacks any nexus between its legislative end—restricting political subdivisions from requiring residency as condition of employment—and the working environment, we hold that R.C. 9.481 was not validly enacted pursuant to Article II, Section 34 of the Ohio Constitution.

{¶64} Lima's assignment of error two, is therefore, sustained.

ASSIGNMENT OF ERROR NO. I

THE TRIAL COURT ERRED IN FINDING R.C. 9.481 IS A GENERAL LAW OF STATEWIDE CONCERN

{¶65} Having sustained Lima's second assignment of error, Lima's first assignment of error is now relevant and dispositive to this case. In its first assignment of error, Lima argues that the trial court incorrectly determined that R.C. 9.481 is constitutional pursuant to the doctrine of statewide concern. Lima contends that the trial court did not apply the doctrine of statewide concern within the context of the *Canton* test. Under a proper formulation of the *Canton* test, argues Lima, R.C. 9.481 is not a "general law"; and therefore, does not supersede Lima's home rule authority. In addition,

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Lima argues that its residency requirement is a matter of local self-government; and therefore, prevails under the *Canton* test.⁶

{¶66} The State argues that regulation of residency requirements has transformed into a matter of statewide concern due to the extraterritorial effects that such requirements have on other communities. Further, the State argues that since Lima enacted its residency pursuant to its local self-government power and not its police power, the *Canton* test does not apply. (State's Brief at 17). We disagree with the State's interpretation of the applicable case law; and therefore, find that the State's arguments lack merit.

{¶67} First, the State's argument that *Canton* does not apply when a municipality acts pursuant to its local self-government power is correct, but it certainly does not mean that the State prevails.⁷

The first step in a home-rule analysis is to 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. On the other hand, if, as is more likely, the ordinance pertains to concurrent police power rather than the right to self-government, the ordinance that is in conflict must yield in the face of a general state law.

Am. Financial Servs. Assn. v. Cleveland, 112 Ohio St.3d 170, 2006-Ohio-6043, 858

⁶ Both the State and Lima concede that *Canton* prong one is met. The disagreement is whether prongs two and three are met.

⁷ In fact, Lima is arguing that its residency requirement was passed pursuant to its local self-government power; and therefore *Canton* prong two fails.

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N.E.2d 776, ¶23, citing *Twinsburg v. State Emp. Relations Bd.* (1988), 39 Ohio St.3d 226, 228, 530 N.E.2d 26, overruled on other grounds, *Rocky River*, 43 Ohio St.3d 1. On the contrary, if Lima enacted its residency requirement pursuant to its local self-government power, the “analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction,” and Lima prevails. *Id.*

{¶68} This result is also supported from the fact that the *Canton* three-prong preemption test was developed in order to determine whether a municipal ordinance must yield to the provisions of a state statute. *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶9; *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*, 65 Ohio St.3d 242, 244, 602 N.E.2d 1147. *Canton* prong two requires that: “the ordinance is an exercise of the police power, rather than local self-government.” Therefore, if: (1) the *Canton* test determines whether a municipal ordinance must yield to the provisions of a state statute; (2) *Canton* prong two requires that Lima enacted its residency requirement pursuant to the police power; and (3) Lima enacted its residency requirement as an act of local self-government as the State argues; then, Lima’s ordinance need *not* yield to R.C. 9.481.

{¶69} Second, the State is appealing to the doctrine of statewide concern as an independent ground for preemption. That argument, however, was rejected by the Ohio Supreme Court in *Am. Financial Servs.*, *supra*. The Ohio Supreme Court explained, “[w]e

recognize, however, that the application of “statewide concern” as a separate doctrine has caused confusion, because some courts have considered the doctrine a separate ground upon which the state may regulate.” 2006-Ohio-6043, at ¶29, citing *Dayton*, 157 Ohio App.3d 736, 2004-Ohio-3141, 813 N.E.2d 707, ¶¶32-76. The Court in *Am. Financial Servs.* clarified that the statewide concern doctrine is *part of* the *Canton* three-prong preemption test and used to determine whether “the ordinance is an exercise of the police power, rather than local self-government” (*Canton* prong two). *Id.* at ¶30.

{¶70} Since we do not believe the State intended to admit that *Canton* prong two is lacking, we will proceed with the *Canton* analysis, beginning with Lima’s first argument that R.C. 9.481 is not a “general law” as required by *Canton* prong three. If *Canton* prong three is met, we must determine whether *Canton* prong two is met; however, if prong three is not met, then the *Canton* test fails and the inquiry is over.

{¶71} Prong three of *Canton*’s preemption test requires that the state statute is a “general law.” 2002-Ohio-2005, at ¶9. Whether the state statute is a general law is, itself, determined by a separate four-prong test. *Id.* at ¶21. To be a general law under prong three of *Canton*’s preemption 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.

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Id. Lima argues that R.C. 9.481 does not meet prongs three and four of the *Canton* general law test. We agree.

A. Police, Sanitary, or Similar Regulation

{¶72} The Court in *Canton* explained that “general laws” within Section 3, Article XVIII of the Ohio Constitution means “statutes setting forth police, sanitary or similar regulations and not statutes which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations.” 2002-Ohio-2005, at ¶31, citing *W. Jefferson v. Robinson*, 1 Ohio St.2d 113, 205 N.E.2d 382, at paragraph three of the syllabus. The pertinent language of R.C. 9.481 provides: “[e]xcept as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state.” Thus, on its face, R.C. 9.481 clearly purports “to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations.” Id.

{¶73} However, in *Canton* the Court determined that paragraph three of *Robinson*, supra, really meant “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.” (Emphasis added). Id., citing *Clermont Environmental Reclamation Co. v. Wiederhold* (1982), 2 Ohio St.3d 44, 48, 442 N.E.2d 1278. Thus, the critical inquiry in this case is

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whether allowing political subdivision employees to reside in any part of the state is an “overriding state interest.”

{¶74} The Court in *Canton* did not explain what it meant by “overriding state interest,” nor did it definitely conclude that the law at issue in that case was one such “overriding state interest.” Rather, the Court in *Canton* merely concluded 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.” (Emphasis added). 2002-Ohio-2005, at ¶33. The Court in *Claremont*, on the other hand, concluded that the issue of “whether there will be safe and properly operated hazardous waste disposal facilities within this state to receive the potentially dangerous wastes from Ohio industry and, by so doing, prevent such wastes from fouling our water and countryside” was an overriding state interest. 2 Ohio St.3d at 49.

{¶75} Even if there may be a state interest at stake in this case, it is not an ‘overriding’ one. When passing R.C. 9.481, the General Assembly declared its intent to recognize “[t]he inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution.” Sub. S.B. No. 82, §2. However, “[i]nterpretation of the state and federal Constitutions is a role exclusive to the judicial branch.” *Beagle v. Walden* (1997), 78 Ohio St.3d 59, 62, 676 N.E.2d 506. Although the citizens of Ohio may have a right to determine where they live under Article 1, Section 1, citizens do not have a right to live where they want and demand employment with a particular employer. See *Smeltzer v. Smelterzer* (Nov. 24, 1993), 7th

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Dist. No. 92-C-50, at *1, citing *Allison v. Akron* (1974), 45 Ohio App.2d 227, 343 N.E.2d 128; *Cutshall v. Sundquist* (C.A. 6, 1999), 193 F.3d 466, 479; *Morgan v. Cianciola* (Dec. 28, 1987) 7th Dist. No. 87 C.A. 130, at *1 (“The constitution does not guarantee the right to hold a specific job with a particular employer, but, rather, the right ‘to follow a chosen trade or occupation, and to earn a livelihood for oneself * * *.’”).

{¶76} Certainly the preservation of a Constitutional right would be an “overriding state interest” on the same scale as the State’s interest in protecting the water supply from hazardous waste. However, there is no constitutional right to choose where one lives *and*, at the same time, demand employment from an unwilling employer. So, the State’s interest in prohibiting political subdivisions from passing residency restrictions is not an ‘overriding’ one, like the State’s interest was in *Claremont*, *supra*.

{¶77} On the other hand, Lima’s interest in establishing residency as a qualification of employment is substantial. The Mayor of Lima gave several important reasons for the residency requirement; specifically it:

- (1) **promotes the City’s interest in the employment of individuals who are highly committed to the betterment of the City where they both live and work;**
- (2) **enhances the quality of work performance by employing individuals who are knowledgeable about and aware of issues and conditions in the City;**
- (3) **promotes the employment of individuals with a greater empathy for the real and long term concerns and problems of the people of Lima;**
- (4) **promotes the development and maintenance of a workforce with a greater personal stake in working to ensure the City of Lima’s improvement and progress over the long term;**

- (5) promotes the availability of resident employees who are easily available for emergency situations and who can respond promptly if on-call for certain duties;
- (6) promotes the ability of the City to maintain a workforce that reflects the racial and ethnic diversity of its population and its absence would undermine those efforts;
- (7) produces economic benefits that flow to a city from having resident employees which are of a particular importance in an economically depressed city such as Lima;
- (8) promotes the value of real estate in the City;
- (9) promotes the development and maintenance of strong neighborhoods anchored by stable, wage-earning City employees and their families; and
- (10) promotes numerous other benefits to the City of Lima and helps avoid other harms.

(Mayor of Lima Affidavit at 8). In addition to these reasons, the qualification, duties, and selection of municipal officers has traditionally been within a municipality's home rule authority. *State ex rel. Lentz, v. Edwards* (1914), 90 Ohio St. 305, 107 N.E. 768.); *State ex rel. Frankenstein v. Hillenbrand* (1919), 100 Ohio St. 339, 343-345, 126 N.E. 309; *State ex rel. Mullin v. Mansfield* (1971), 26 Ohio St.2d 129, 269 N.E.2d 602; *Northern Ohio Patrolmen's Benev. Assn. v. Parma* (1980), 61 Ohio St.2d 375, 402 N.E.2d 519; *State Personnel Bd. of Review v. Bay Village Civ. Serv. Comm.* (1986), 28 Ohio St.3d 214, 216, 503 N.E.2d 518. The Ohio Supreme Court has extended the home rule authority to the appointment and regulation of police officers and other civil service functions as well. *Harsney v. Allen* (1953), 160 Ohio St. 36, 40, 113 N.E.2d 86, citing *State ex rel. Lentz v. Edwards* (1914), 90 Ohio St. 305, 107 N.E. 768; *State ex rel. Regetz v. Cleveland Civ. Serv. Comm.* (1995), 72 Ohio St.3d 167, 169, 648 N.E.2d 495, citing *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191, 151 N.E.2d 722; *State ex rel.*

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Meyers v. Columbus (1995), 71 Ohio St.3d 603, 606, 646 N.E.2d 173, citing *State ex rel. Bardo v. Lyndhurst* (1988), 37 Ohio St.3d 106, 108, 524 N.E.2d 447; *State ex rel. Hipp v. N. Canton* (1996), 75 Ohio St.3d 221, 224, 661 N.E.2d 1090. Lima has a similar interest in the qualifications of its other employees as well, and exercising legislative authority in furtherance of this interest should be within the home rule authority.

{¶78} Even if the State had an ‘overriding’ interest in this case, R.C. 9.481 has several exceptions similar to the law in *Canton*, which defeats the State’s proposed interest. The Court in *Canton* recognized that the State’s proposed interest in passing R.C. 3781.184(C) was to provide affordable housing options across the state; however the law had an exception for restrictive covenants in private deeds. 2002-Ohio-2005 at ¶33, citing R.C. 3781.184(D). The Court in *Canton* found that this exception actually defeated the State’s purpose; and therefore, the law failed to set forth police, sanitary, or similar regulations and only served to limit the legislative authority of municipalities. *Id.*

{¶79} The General Assembly’s purpose in passing R.C. 9.481 was:

*** * * to generally allow the employees of Ohio’s political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those public employees.**

Sub. S.B. No. 82, §3. First, R.C. 9.481, like R.C. 3781.184(C), on its face exempts private parties and the State, itself. R.C. 9.481(C). Second, like R.C. 3781.184(C), R.C. 9.481 has two further exemptions for “volunteers” and for employees required to respond

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to 'emergencies' or 'disasters.' R.C. 9.481(B)(2)(a); (B)(2)(b). Thus, R.C. 9.481 has exemptions that defeat its purpose of generally prohibiting residency restrictions, and, like the law at issue in *Canton*, fails to set forth police, sanitary, or similar regulations.

{¶80} We, therefore, find that R.C. 9.481 does not set forth police, sanitary, or similar regulations but merely limits the municipality's power to do the same, and prohibiting political subdivisions from requiring residency as a condition of employment is not an overriding state interest sufficient to meet prong three of *Canton's* general law test.

B. Prescribing a Rule of Conduct on Citizens Generally

{¶81} Prong four of *Canton's* general law test requires that the statute "prescribe a rule of conduct upon citizens generally." 2002-Ohio-2005, at ¶21. The Court in *Canton* explained that a general law "is [not] a limitation upon law making by municipal legislative bodies" and has "no special relation to any of the political subdivisions of the state." 2002-Ohio-2005, at ¶¶34, 38, citing *Youngstown v. Evans* (1929), 121 Ohio St. 342, 168 N.E. 844 (Statute providing "that all municipal corporations shall have general power 'to make the violation of ordinances a misdemeanor, and to provide for the punishment thereof by fine or imprisonment, or both, but such fine shall not exceed five hundred dollars and such imprisonment shall not exceed six months'" does not prescribe a rule of conduct upon citizens generally.); *Schneiderman v. Sesanstein* (1929), 121 Ohio St. 80, 84, 167 N.E. 158 (speed limits), quoting *Froelich v. Cleveland* (1919), 99 Ohio St. 376, 386, 124 N.E. 212; *Clermont*, 2 Ohio St.3d 44 (hazardous waste facility).

{¶82} This same standard has been applied by the Ohio Supreme Court in other home rule cases. *Robinson*, 1 Ohio St.2d at 117 (statute that purported to grant a municipality power to license solicitors does not prescribe a rule of conduct upon citizens generally); *Linndale v. State* (1999), 85 Ohio St.3d 52, 55, 706 N.E. 2d 1227 (prohibiting local law enforcement officers from issuing speeding and excess weight citations on interstate freeways does not prescribe a rule of conduct upon citizens generally).

{¶83} Like the statutes in *Canton*, *Youngstown*, and *Linndale*, R.C. 9.481 only purports to limit a municipality's legislative power and has a special relationship to the state political subdivisions. R.C. 9.481's plain language states: "[e]xcept as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." R.C. 9.481 is, on its face, a limitation of local legislative power and applies only to political subdivisions. As such, it fails prong four of *Canton's* general law test.

C. Conclusion of *Canton's* General Law & Preemption Tests

{¶84} R.C. 9.481 fails prongs three and four of *Canton's* general law test; therefore, R.C. 9.481 does not preempt Lima Ordinance No. 201-00 since it fails *Canton's* three-part preemption test. 2002-Ohio-2005, at ¶¶9, 21. Because we have determined that R.C. 9.481 fails prong three of *Canton's* preemption test and all three prongs must be met, we need not consider the parties' arguments on whether R.C. 9.481 also fails prong two of *Canton's* preemption test. 2002-Ohio-2005, at ¶9. Since R.C.

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9.481 fails *Canton*'s preemption test, it violates Section 3, Article XVIII of the Ohio Constitution. 2002-Ohio-2005, at ¶39.

{¶85} Lima's second assignment of error is, therefore, sustained.

ASSIGNMENT OF ERROR NO. III

THE TRIAL COURT ERRED IN NOT FINDING R.C. 9.481 VIOLATES ARTICLE II, SECTION 26 OF THE OHIO CONSTITUTION.

{¶86} In its third assignment of error, Lima argues that the trial court erred in not finding that R.C. 9.481 violates Article II, Section 26 of the Ohio Constitution (the Uniformity Clause). Since we have decided that R.C. 9.481 violates Section 3, Article XVIII of the Ohio Constitution, we need not decide whether it also violates the Uniformity Clause. *Canton*, 2002-Ohio-2005, at ¶39; *Linndale*, 85 Ohio St.3d at 55.

V. Conclusion

{¶87} A few closing remarks are appropriate before we conclude. We understand that residency requirements have a real impact on Ohio citizens and are often felt most by working families. Were we members of the Ohio Legislature, our decision might be different than that required of us today. We, however, are judicial officers and have taken an oath to uphold the Ohio Constitution and the laws of this State—and to that oath we hope to be found faithful by those who have so entrusted us. Thus constrained, we summarize our conclusions of law:

{¶88} R.C. 9.481 was not validly enacted pursuant to Article II, Section 34 of the Ohio Constitution, because Section 34's language, legislative history, and case law

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support finding that laws providing for the 'general welfare' 'of employees' must have, at minimum, *some* nexus between their legislative end and the working environment.

{¶89} R.C. 9.481 is not a general law under *Canton* that would preempt Lima Ordinance No. 201-00; therefore, R.C. 9.481 violates Section 3, Article XVIII of the Ohio Constitution. Lima Ordinance No. 201-00 is a valid exercise of local self-government pursuant to Section 3, Article XVIII of the Ohio Constitution and prevails, R.C. 9.481 notwithstanding.

{¶90} Having found error prejudicial to the appellant herein in the particulars assigned and argued, we reverse the judgment of the trial court and remand for further proceedings consistent with this opinion.

*Judgment Reversed and
Cause Remanded.*

ROGERS, P.J. and WILLAMOWSKI, J., concur.

/jlr

ORDINANCE NO.

Introduced by *Napier* Councilman
 Seconded by *Napier* Councilman
 Form Approved *[Signature]* Director of Law
 PUBLICATION: I hereby certify that Ord. No. _____ was published in a
 summary manner according to law in the Lima News on _____

Sally Clemans, Clerk

VOTE	1ST		2ND		3RD	
	Y	N	Y	N	Y	N
MOORE	✓					
NIXON	✓					
HIRE	✓					
DESEMBERG						
NAPIER	✓					
GLENN	✓					
TOWNSEND	✓					
ADAMS	✓					
HUFFMAN	✓					
TOTAL	8	0				

AN ORDINANCE ESTABLISHING A RESIDENCY REQUIREMENT FOR FUTURE EMPLOYEES OF THE CITY; AND DECLARING AN EMERGENCY.

WHEREAS, the Mayor has requested that Council implement a requirement that future City employees live inside the corporate boundaries of the municipality; and,

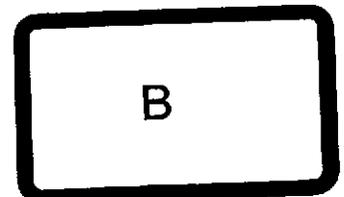
WHEREAS, the City has entered into collective bargaining agreements with The American Federation of State, County, and Municipal Employees, Ohio Council 8, Local 1002, AFL-CIO, The International Association of Firefighters, AFL-CIO, Local 334, and The Fraternal Order of Police, Ohio Labor Council, Inc. (excluding the bargaining unit for Park Rangers), wherein the employees belonging to said unions have agreed through the collective bargaining process to a residency requirement for future employees; and,

WHEREAS, pursuant to City Charter section 72, Council has the authority to implement a residency requirement for employees, and Council hereby determines that such a requirement is in the best interests of the City, its inhabitants, and its employees; and,

WHEREAS, an emergency exists because of the immediate need to establish a residency requirement as set forth herein, and it is necessary that in order to preserve the public peace, property, health and safety, and to provide for the usual daily operation of the municipal government, and by reason thereof, this ordinance shall take effect forthwith upon its passage; Now, Therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LIMA, OHIO, TWO-THIRDS OF THE MEMBERS ELECTED THERETO CONCURRING:

Section 1. Subject to the further provisions herein, there is hereby established a requirement for persons appointed by the Mayor as employees of the City on and after the date of passage of this ordinance, that as a condition of permanent employment with the City all such employees shall live in a primary permanent residence within the corporate boundaries of the municipality.



Section 2. Future employees covered under this ordinance and who are also members of The International Association of Firefighters, AFL-CIO, Local 334, shall not be required to establish residency until 180 calendar days after the expiration of the employee probationary period as may be set forth in the applicable collective bargaining agreement.

Section 3. Future employees covered under this ordinance and who are also members of The Fraternal Order of Police, Ohio Labor Council, Inc. (excluding the bargaining unit for Park Rangers), shall not be required to establish residency until 6 months after the expiration of the employee probationary period as may be set forth in the applicable collective bargaining agreement.

Section 4. Future employees covered under this ordinance and who are also members of The American Federation of State, County, and Municipal Employees, Ohio Council 8, Local 1002, AFL-CIO, shall not be required to establish residency until 90 days after the expiration of the employee probationary period as may be set forth in the applicable collective bargaining agreement.

Section 5. Future employees covered under this ordinance who are not members of a collective bargaining unit must establish residency within ~~360~~ ⁵⁴⁰ days of the effective date of appointment by the Mayor (inclusive of the probationary period) ^{11/23}

Section 6. The Mayor is authorized to establish a policy to administer the provisions of this ordinance, and the Mayor is further authorized to extend the periods of time set forth in sections 2 through 5 above, for a period not to exceed 1 year, if the Mayor determines it to be appropriate under the circumstances then existing for any employee, on a case-by-case basis.

Section 7. This ordinance shall not apply to those persons who are current employees of the City prior to the date of passage of this ordinance; however, should any such existing employee separate from employment with the City, and then be re-appointed to the same or a new position, then the residency requirements of this ordinance shall apply.

Section 8. This ordinance shall not apply to any existing or future employees appointed to the position of Park Ranger.

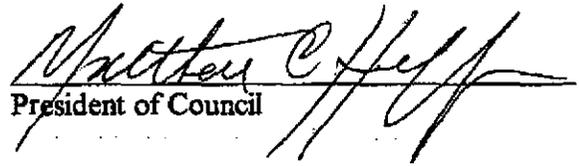
Section 9. Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the adoption of this ordinance were taken in an open meeting and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings held in compliance with the law.

Section 10. The Clerk of Council is authorized and directed to cause publication of this ordinance to be made in a summary manner as provided by the City Charter.

Section 11. For the reasons set forth in the preamble hereto which is made a part hereof, this ordinance is hereby determined to be an emergency measure and shall take effect and be in force forthwith provided that it receives the affirmative vote of two-thirds of the members elected to

Council; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed: October 23, 2000.


President of Council

Approved: October 23, 2000.


Mayor

Attest: 
Clerk

AN ACT

To enact section 9.481 of the Revised Code to generally prohibit political subdivisions from imposing residency requirements on certain employees.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 9.481 of the Revised Code be enacted to read as follows:

Sec. 9.481. (A) As used in this section:

(1) "Political subdivision" has the same meaning as in section 2743.01 of the Revised Code.

(2) "Volunteer" means a person who is not paid for service or who is employed on less than a permanent full-time basis.

(B)(1) Except as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state.

(2)(a) Division (B)(1) of this section does not apply to a volunteer.

(b) To ensure adequate response times by certain employees of political subdivisions to emergencies or disasters while ensuring that those employees generally are free to reside throughout the state, the electors of any political subdivision may file an initiative petition to submit a local law to the electorate, or the legislative authority of the political subdivision may adopt an ordinance or resolution, that requires any individual employed by that political subdivision, as a condition of employment, to reside either in the county where the political subdivision is located or in any adjacent county in this state. For the purposes of this section, an initiative petition shall be filed and considered as provided in sections 731.28 and 731.31 of the Revised Code, except that the fiscal officer of the political subdivision shall take the actions prescribed for the auditor or clerk if the political subdivision has no auditor or clerk, and except that references to a municipal corporation shall be considered to be references to the applicable political subdivision.

(C) Except as otherwise provided in division (B)(2) of this section, employees of political subdivisions of this state have the right to reside any

place they desire.

SECTION 2. In enacting section 9.481 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize both of the following:

(A) The inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution.

(B) Section 34 of Article II, Ohio Constitution, specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees, and that no other provision of the Ohio Constitution impairs or limits this power, including Section 3 of Article XVIII, Ohio Constitution.

SECTION 3. The General Assembly finds, in enacting section 9.481 of the Revised Code in this act, that it is a matter of statewide concern to generally allow the employees of Ohio's political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those public employees.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 82

4

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____

COMMON PLEAS COURT
FILED

2007 FEB 15 AM 10:15

CLERK OF COURT
JULIE M. DUNN
ALLEN COUNTY, OHIO

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO

CITY OF LIMA, OHIO

*

CASE NO. : CV2006 0518

Plaintiff

*

-v-

*

STATE OF OHIO

*

**ORDER
DECLARATORY JUDGMENT**

Defendant

*

.....

This matter is before the Court upon the Complaint for Declaratory Judgment and Injunctive Relief filed by the Plaintiff, City of Lima, on May 22, 2006 for an Order declaring that Ohio Revised Code 9.481 be declared unconstitutional. Both City of Lima and Defendant, State of Ohio, have filed their respective well reasoned Motions for Summary Judgment and Responses. The Court has considered the respective arguments of the parties, affidavits and applicable law, without hearing.

STATEMENT OF FACTS

In 1912, Ohio citizens voted to amend the Ohio Constitution to include several provisions that expanded the powers of municipalities,



including the authority to adopt their own Charter, which are referred to as the Home Rule Amendment. *See Ohio Const. Art. XVIII.*

Section 3 of Article XVIII of the Ohio Constitution provides “[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 of the Ohio Constitution grants municipalities two separate types of authority: (a) to regulate matters of local self-government and (b) to adopt and enforce police regulations that do not conflict with State’s general laws.

As it applies to the instant case, the original Charter for the City of Lima was adopted by its electorate on November 2, 1920. Section 72 of the Lima City Charter was amended in 1974 to specifically allow the Lima City Council to determine by Ordinance whether to establish a residency requirement for city employees.

On October 23, 2000, Lima City Council passed Ordinance 201-00 which, “established a requirement for persons appointed by the Mayor as employees of the City on and after the date of passage of this Ordinance, that as a condition of employment with the City all such employees shall live in a

primary permanent residency within the corporate boundaries of the municipality.” (emphasis added)

As noted by Defendant, the General Assembly found that there are approximately 125 cities and 13 villages in the State of Ohio that subject their employees to residency restrictions. See Ohio Legislative Services Commission’s “Fiscal Note and Local Impact Statement” (attached as Defendant’s Exhibit C).

On May 1, 2006, the Ohio General Assembly enacted R.C. 9.481 to insure that employees of all Ohio political subdivisions would no longer be thwarted in exercising their freedom to choose where they want to live in the State of Ohio.

Specifically, O.R.C. 9.481(B)(1) provides:

“Except as otherwise provided in division (B)(2), of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state.” (emphasis added)

The General Assembly in adopting R.C. 9.481(B)(2)(b), the exception, provided that political subdivisions had the ability to legislate in this area if they seek “to insure adequate response times by certain employees of political subdivisions to emergencies or disasters while

insuring that those employees generally are free to reside throughout the state.”

ISSUE

The issue in this case is whether a state statute, specifically O.R.C. 9.481 as enacted by the General Assembly which provides employees of Ohio's political subdivisions with freedom to choose where they want to live, is unconstitutional because it conflicts with Section 3, Article XVIII of the Ohio Constitution that restricts this freedom (Lima Ordinance 201-00).

Pursuant to Civil Rule 56, summary judgment is appropriate if: (1) there is no issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) 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 or her favor. *State ex rel. Cassels v. Dayton City School Dist. Bd. of Ed.* (1994), 69 Ohio St.3d 217, 219; See *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327. The burden of showing no genuine issue exists as to any material fact falls upon the moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

The Ohio Supreme Court has established the standards for granting summary judgment under Civ. R. 56 when a party asserts that a nonmoving

party has no evidence to establish an essential element of the nonmoving party's case. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. Civ. R. 56(E) requires the nonmoving party to go beyond the pleadings, affidavits, or by the depositions, answers to interrogatories, and admissions on file, and designate specific facts showing that there is a genuine issue for trial.

Dresher at 289 (citing *Celotex Corp. v. Catrett* (1986), 477 U.S. 317). The last two sentences of Civ. R. 56(E) provide that:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in the rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Accordingly, if the moving party has satisfied its initial burden, the nonmoving party then must set forth specific facts showing that there is a genuine issue for trial, and if the nonmovant does not respond, summary judgment, if appropriate, shall be entered against the nonmoving party.

Dresher at 293.

The City of Lima claims that it has a compelling interest in its residency requirements in that the societal and economic benefits as outlined in its brief are crucial to the City's on-going vitality and long-term redevelopment efforts. Further, it is claimed that by adopting a residency

provision into the Charter of the City of Lima, the people of the City of Lima have exercised the powers of local self-government that are specifically conferred upon them by Article XVIII, Sections 3 and 7 of the Ohio Constitution.

The Court finds that the Ohio General Assembly made a legislative finding that it is a matter of statewide concern (emphasis added) to generally allow the employees of Ohio's political subdivisions to choose where to live and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the State in order to provide for the comfort, health, safety and general welfare of those employees. See 126 S.B. 82, Section 3. However, the Ohio Legislative Service Commission recognized that the prohibition contained in the Act as it relates to municipal corporations may violate the "Home Rule" provisions of the Ohio Constitution. It noted that, "residency requirements for municipal employees most likely are a matter of local self-government, which can be overcome only when there is a state law expressing a matter of statewide concern."

HOME RULE

The City of Lima claims, plain and simple, that this a "Home Rule" case. Further, the Court is directed by the City of Lima that it need look no

further than the case of *Am. Financial Servs. Assn. v. Cleveland*, 2000-Ohio, 6043 for authority in deciding in its favor.

Am. Financial, supra, provides:

The first step in a Home Rule analysis is to determine "whether the matter in question involves an exercise in 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.

There has been much confusion in this area. As stated in *Am. Financial, supra*, at paragraph 29, ". . . the application of "statewide concern" as a separate doctrine has caused confusion, . . . because some courts have considered the doctrine a separate ground upon which the state may regulate. . . . "[S]tatewide concern" describes the extent of state police power which was left unimpaired by the adoption of the Home Rule Amendments, as well as . . . those areas of authority which are outside the outer limits of "local" power, i.e., those matters which are neither 'local self-government' nor 'police and sanitary regulations.'"

Therefore the "statewide concern doctrine" falls within the existing framework of what is called the *Canton* test (*Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963.)

The City of Lima claims that O.R.C. 9.48, as a matter of law, is not a general law but a local law. The "*Canton* test" provides:

In *Canton v. State*, 95 Ohio St.3d 149 . . . we announced a 4-part test defining what constitutes a general law for the 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." See *Am. Financial, supra*, paragraph 32.

The City of Lima further contends that O.R.C. 9.481 clearly fails to meet parts 3 and 4 of the "*Canton* test." The law, it is claimed, as written is clearly only a prohibition against the authority of the state's political subdivisions, not as a regulation for the populous as a whole. Therefore, based upon the *Canton* analysis required by the *Am. Financial* court, O.R.C. 9.481 fails on its merits.

The State of Ohio argues that the City's Home Rule contention must fail because the Ohio Supreme Court has already declared that the General Assembly's authority to regulate under Article II, Section 34 of the Ohio Constitution is constitutionally superior to, and can not be impaired or negated by, the City of Lima's Home Rule authority under Article XVIII, Section 3 (the Home Rule Amendment).

The Court finds that pursuant to Article II, Section 34 of the Ohio Constitution, the General Assembly undeniably has the authority to enact

laws that provide for the comfort, health, safety and general welfare of employees. Specifically, Section 34 states:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage and providing for the comfort, health, safety and general welfare of all employees; and no further provisions of the constitution shall impair or limit this power. (emphasis added)

The State of Ohio argues that the *City of Rocky River v. State Employment Relations Bd., et al.* (1989), 43 Ohio St.3d 1 is the authority for the determination of the instant case. (This case is referred to often as “*Rocky River IV*”.) The Ohio Supreme Court in *City of Rocky River, supra*, concluded that “the language of Section 34 is so clear and unequivocal that resort to secondary sources, such as the constitutional debates, is actually unnecessary. Where the language of a statute or constitutional provision is clear and unambiguous, it is the duty of the courts to enforce the provisions as written.” *Supra*, at 15.

In determining the constitutionality of O.R.C. 9.481, the Court is cognizant of the long established principle requiring courts to presume the constitutionality of legislative enactments. *State, ex rel. Jackman v. Court of Common Pleas* (1967), 9 Ohio St.2d 159. This presumption can only be overcome by proof beyond a reasonable doubt, that the legislation and the

Constitution are clearly incompatible. *State, ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142.

Based upon the presumption of constitutionality and the analysis in *Rocky River IV*, the Court finds that the final phrase of Section 34, which states "no other provision of the Constitution shall impair or limit this power," means just that. As quoted by the State and as reasoned by the Ohio Supreme Court in *Rocky River IV*, "How can it seriously be maintained that the home-rule amendment is somehow exempt from this mandate? Section 34 should not be clearer or more unequivocal." *Supra*, at 16. Therefore, the Ohio Supreme Court held that "Section 3, Article XVIII of the Ohio Constitution, the Home Rule Provision, may not be interposed to impair, limit or negate" legislation validly enacted pursuant to Article II, Section 34.

As it applies to the instant case and pursuant to *Rocky River IV*, the City of Lima's Home Rule argument need not be considered because legislation enacted under Section 34 can not be impaired by legislation enacted under the Home Rule Amendment. Since the Ohio General Assembly enacted O.R.C. 9.481 pursuant to its Section 34 powers, the City of Lima's Ordinance enacted under the Home Rule Amendment can not impair, limit or negate O.R.C. 9.481.

The Court further finds that a residency requirement is a condition of employment. *City of St. Bernard v. State Emp. Relations Bd.* (1st District 1991), 74 Ohio App.3d 3, 6. Since residency requirements are clearly a condition of employment, the regulation of residency requirements in O.R.C. 9.481 is concerned with the general welfare of public employees and the state statute “may not be affected in any way by the “Home Rule” Amendment.” *Rocky River IV, supra*, at 13.

In the instant action, the Ohio General Assembly considered this to be a situation where the public interest necessitated legislative action. It enacted O.R.C. 9.481 to address and modify existing concerns. Jurists may not agree that such remedy is the best or most effective means of resolving the problem. Nevertheless, the remedy must be upheld unless it constitutes a plain affront to a specific provision of the Constitution. *American Ass’n. of Univ. Professors v. Central State Univ.* (1999), 87 Ohio St.3d 55, 61. Even though a “Home Rule” analysis is unnecessary, for the reasons set forth above, the Court shall do so in the alternative.

People change. Society changes. And, as a result, laws change. Years ago a residency requirement may have been just a matter of local concern. The Court is reminded of the 1950 Tennessee Ernie Ford song “*Sixteen Tons*”:

"You load sixteen tons, what do you get
Another day older and deeper in debt
Saint Peter don't call me 'cause I can't go
I owe my soul to the company store."

Compare the above to the 2005-2006 Thomas L. Friedman book entitled *The World is Flat (A Brief History of the Twenty-first Century)*; Farrar, Straus & Giroux, 19 Union Square West, New York, NY 10003; First updated and expanded edition 2006. This book accounts the great changes taking place in our time, as lightning swift advances in technology and communications bring people all over the globe together and put us in touch as never before.

The Court finds the issue of residency requirement is a matter of statewide concern due to the extraterritorial effects that residency requirements have on other communities throughout the State of Ohio. Since this is an issue of statewide concern, residency requirements is a matter that has passed from one exclusively of local self-government to one of statewide concern and is properly addressed by statewide legislation. While powers granted under the Home Rule Amendment relate to local matters, "even in the regulation of such local matters a municipality may not infringe on matters of general and statewide interest." *Cleveland Electric Illuminating Co. v. City of Painesville* (1968), 15 Ohio St.2d 125,129.

The Court notes a New York case for the proposition that a city's home-rule authority did not supersede a state statute. In the case of *Uniformed Firefighters Assn., et al. v. City of New York, et al.* (1980), 50 N.Y.2d 85, the court concluded that the City's Home Rule authority did not supersede a state statute dealing with a matter of state concern, namely the residency of municipal officers and employees. The Court stated specifically, "while the structure and control of the municipal service departments is an issue here and may be considered of local concern within the meaning of municipal home rule . . . the residence of their members, unrelated to job performance or departmental organization is a matter of state-wide concern not subject to the Home Rule."

Further, the Court finds that a "*Canton* test" is not necessary but even if the same is applied, the City of Lima's argument fails.

1. Generally permitting employees of political subdivisions through the State of Ohio to live where they choose while providing political subdivisions with a process for enacting specific exceptions, constitutes a statewide and comprehensive legislative enactment in and of itself.
2. O.R.C. 9.481 operates uniformly throughout the State of Ohio because the statute applies across the State to all included within the statute's operative provisions.
3. Subject of providing employees of political subdivisions throughout the State of Ohio with the freedom to choose where they want to live is of a general nature for all of these employees. Specifically, the law's subject not only affects

employees of the City of Lima by providing them with the freedom to choose where they want to live, but it also affects employees of every other political subdivision within the State of Ohio in the same manner.

4. O.R.C. 9.481 qualifies as an exercise of police power. State's police power embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or the public health. (Quoted from *Wessel v. Timberlake* (1916), 95 Ohio St. 21, 34.)
5. O.R.C. 9.481 proscribes a rule of conduct on citizens generally. As noted by the State, the statute applies to political subdivisions, but "the practical effect of the legislation and common sense tells us "that O.R.C. 9.481 has a direct impact on the conduct of employees of political subdivisions generally."” *City of Canton, supra*, at 155.

As a result, the Court declares that O.R.C. 9.481 is constitutional pursuant to the doctrine of statewide concern, thus trumping and/or superseding all conflicting local laws including that enacted pursuant to the City's power of local self-government (Ordinance #201-00).

The Court further finds that the Ohio General Assembly in enacting O.R.C. 9.481 declared its intent to recognize . . . Section 34 of Article II, Ohio Constitution, which specifies that laws may be passed providing for the comfort, health, safety and general welfare of all employees and that no other provision of the Ohio Constitution impairs or limits this power, including Section 3 of Article XVIII, Ohio Constitution.

Since the General Assembly concluded that it is necessary to provide employees of Ohio's political subdivisions with the right to reside anywhere they wish to live, the enactment of O.R.C. 9.481(C) undoubtedly bears a real and substantial relation to public health, safety and welfare. Further, by providing employees of every Ohio political subdivision with the ability to choose where they want to live, the Ohio General Assembly has provided for the general welfare of these individuals with a law that is neither arbitrary nor unreasonable.

The Court finds that the Plaintiff, City of Lima, has not overcome the heavy burden of the presumption of constitutionality.

O.R.C. 9.481 was lawfully enacted by the Ohio General Assembly to provide for the general welfare of employees of Ohio's political subdivisions, in addition to being a matter of statewide concern. Since the Ohio General Assembly's authority to legislate in this area is constitutionally superior to the City of Lima's Home Rule authority to enact local laws that ban employees from living outside the city's corporate boundaries, the City of Lima's Ordinance #201-00 enacted on October 23, 2000 must succumb to State Law.

Plaintiff, City of Lima's Motion for Summary Judgment is denied.

Defendant, State of Ohio's Motion for Summary Judgment is well taken and the same is granted.

Therefore, the Court finds that O.R.C. 9.481 supersedes the aforesaid City of Lima's Ordinance imposing residency requirements and is constitutional in all respects as a matter of law. Plaintiff, City of Lima, to pay costs.

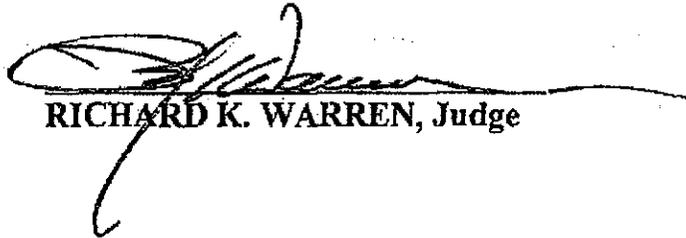
This is a final appealable Order.

IT IS SO ORDERED.

Dated:

2/16/07

cc: Anthony Geiger
Frank M. Strigari
Henry Arnett



RICHARD K. WARREN, Judge

COURT OF APPEALS
FILED

IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
ALLEN COUNTY

2007 DEC -3 AM 8:26

THOMAS B. STALEY-BUSLEY
CLERK OF COURTS
ALLEN COUNTY, OHIO

CITY OF LIMA, OHIO,

PLAINTIFF-APPELLANT,

CASE NO. 1-07-21

v.

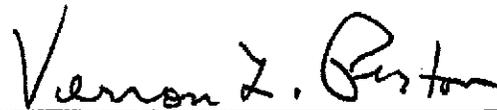
STATE OF OHIO,

JOURNAL
ENTRY

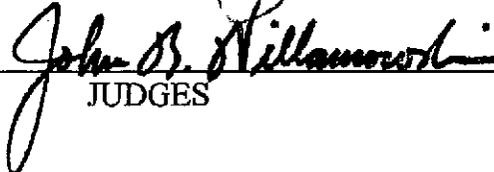
DEFENDANT-APPELLEE.

For the reasons stated in the opinion of this Court rendered herein, it is the judgment and order of this Court that the judgment of the trial court is reversed at the costs of the appellee for which judgment is rendered and this cause is remanded to that court for further proceedings consistent with the opinion and judgment of this Court.

It is further ordered that the Clerk of this Court certify a copy of this judgment to that court as the mandate prescribed by Appellate Rule 27 or by any other provision of law, and also furnish a copy of any opinion filed concurrently herewith directly to the trial judge and parties of record.






JUDGES

DATED: December 3, 2007
/jlr

[Cite as *Dayton v. State*, 2008-Ohio-2589.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

CITY OF DAYTON

Plaintiff-Appellant

v.

STATE OF OHIO, et al.

Defendant-Appellees

Appellate Case No. 22221

Trial Court Case No. 2006-CV-3507

(Civil Appeal from
Common Pleas Court)

OPINION

Rendered on the 30th day of May, 2008.

THOMAS M. GREEN, Atty. Reg. #0016361, JANE M. LYNCH, Atty. Reg. #0012180,
and JARED A. WAGNER, Atty. Reg. #0076674, Green & Green, 800 Performance
Place, 109 North Main street, Dayton, Ohio 45402-1290
Attorneys for Plaintiff-Appellant

Nancy Hardin Rogers, Ohio Attorney General, by FRANK M. STRIGARI, Atty. Reg.
#0078377, and JULIE KELLEY CANNATTI, Atty. Reg. #0079406, Constitutional Offices
Section, 30 Est Broad Street, 16th Floor, Columbus, Ohio 43215
Attorneys for Defendant-Appellee

TRISHA M. DUFF, Atty. Reg. #0052147, Republic Bank Building, 7501 Paragon Road,
Lower Level, Dayton, Ohio 45459
Attorney for Defendant-Appellee IAFF Local #136

HENRY A. ARNETT, Atty. Reg. #0011379, Livorno and Arnett Co., LPA, 1335 Dublin
Road, Suite 108-B, Columbus, Ohio 43215
Attorney for Amicus Curiae Ohio Association of Professional Fire Fighters

FAIN, J.

E

{¶1} Plaintiff-appellant the City of Dayton has a residency requirement for employees. Defendant-appellee the State of Ohio has enacted a statute that prohibits a political subdivision of the State from imposing residency requirements for its employees. This appeal concerns the constitutionality, under the Ohio Constitution, of the State's restriction on residency requirements. Specifically, Dayton appeals from a summary judgment rendered in favor of the State and third-party defendant-appellee International Association of Firefighters Local #136 (IAFF #136). After considering cross-motions for summary judgment, the trial court rendered summary judgment in favor of the State and IAFF #136. In so doing, the trial court upheld the constitutionality of R.C. 9.481, which prohibits political subdivisions from requiring full-time employees, as a condition of employment, to reside in any specific area of the state.

{¶2} Dayton contends that the trial court erred in finding that R.C. 9.481 was enacted pursuant to Section 34, Article II of the Ohio Constitution and in finding that R.C. 9.481 prevails over residency requirements adopted under Dayton's "Home Rule" authority. Dayton also contends that the trial court erred in holding that R.C. 9.481 satisfies requirements for preempting local ordinances.

{¶3} According to Dayton, R.C. 9.481 is an impermissible attempt by the legislature to interpret the Ohio Constitution and create a right at variance with holdings of both the Supreme Court of the United States and the Supreme Court of Ohio. Finally, Dayton contends that R.C. 9.481 violates Section 26, Article II of the Ohio Constitution.

{¶4} We conclude that the enactment of R.C. 9.481 is authorized by the broad grant of authority to provide for the general welfare of working persons provided for in Section 34, Article II of the Ohio Constitution, that may not be impaired by the "Home

Rule” provision in Section 3, Article XVIII of the Ohio Constitution, or by any other provision of the Ohio Constitution, including the preamble.

{¶5} Because we conclude that R.C. 9.481 is authorized by Section 34, Article II of the Ohio Constitution, we need not consider Dayton’s argument that the statute violates the “Home Rule” provision of Section 3, Article XVIII, in that it conflicts with provisions of an ordinance adopted pursuant to Home Rule powers.

{¶6} Finally, we conclude that the General Assembly did not impermissibly interfere with the role of the judiciary by enacting R.C. 9.481, nor does the statute itself violate the Uniformity Clause. Accordingly, the judgment of the trial court is Affirmed.

{¶7} In 1912, Ohio citizens approved various amendments to their constitution, including Article XVIII (the “Home Rule Amendment”), which allowed municipalities the ability to adopt charters and to exercise powers of self-government. Article II was adopted during the same process, and gave Ohio’s legislature broad authority over employee welfare.

{¶8} In 1913, Dayton adopted its first charter. Subsequently, in 1978, Dayton’s City Commission adopted Ordinance No. 25558. This ordinance required all employees in Dayton’s Civil Service to be actual residents and reside physically in the City of Dayton, and to continue to live in the City during the term of their employment. The Commission also enacted Ordinance No. 27505 in 1987, for the purpose of placing the residency issue before the electorate. Based on the approval of the electorate in March 1987, Section 102 was placed in Dayton’s charter.

{¶9} Section 102 provides that:

{¶10} “(A) All employees in the Civil Service of the City of Dayton, appointed after the effective date of this Charter section, must and shall be actual residents of and physically live in the City of Dayton at the time of their appointment, and shall continue to be actual residents and physically live in the City of Dayton during the term of their employment.

{¶11} “(B) All employees in the Civil Service of the City of Dayton, required by Ordinance No. 25558, dated June 28, 1978, and/or personnel regulations, including, but not specifically limited to, Personnel Policies and Procedures Manual § 2.01, originally adopted June 28, 1978, as § 9.10 and revisions thereof, to have actual residence and physically live in the City of Dayton at the time of the effective date of this Charter section shall and must continue to be actual residents of and physically live in the City of Dayton during the term of their employment.

{¶12} “(C) Irrespective and notwithstanding any other provision of this Charter, violation of the provisions of this section shall result in discharge.

{¶13} “(D) The Commission may enact such ordinances as may be necessary and consistent with implementation of this section.” Revised Code of General Ordinances of the City of Dayton (R.C.G.O.) 102.

{¶14} Consistent with R.C.G.O. 102, Dayton employees have been required to reside in Dayton as a condition of employment, and the requirement has been routinely enforced.

{¶15} In 2006, the General Assembly passed S.B. 82, which became effective as R.C. 9.481 in May 2006. R.C. 9.481 applies to all political subdivisions, and provides, in

pertinent part, that:

{¶16} "(B)(1) Except as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state.

{¶17} "(2)(a) Division (B)(1) of this section does not apply to a volunteer.

{¶18} "(b) To ensure adequate response times by certain employees of political subdivisions to emergencies or disasters while ensuring that those employees generally are free to reside throughout the state, the electors of any political subdivision may file an initiative petition to submit a local law to the electorate, or the legislative authority of the political subdivision may adopt an ordinance or resolution, that requires any individual employed by that political subdivision, as a condition of employment, to reside either in the county where the political subdivision is located or in any adjacent county in this state. * * *

{¶19} "(C) Except as otherwise provided in division (B)(2) of this section, employees of political subdivisions of this state have the right to reside any place they desire."

{¶20} The statute defines a "volunteer" as "a person who is not paid for service or who is employed on less than a permanent full-time basis." R.C. 9.481(A)(2). Thus, after R.C. 9.481 became effective, Dayton's full-time employees were no longer required to live in the city as a condition of employment. However, volunteers or part-time employees could be subjected to a residency requirement.

{¶21} Dayton was dissatisfied with this situation and filed a declaratory judgment action against the State of Ohio in May 2006, asking the trial court to declare that R.C.

9.481 is invalid and unenforceable, and that it violates the Ohio Constitution. Dayton also asked for preliminary and permanent injunctions barring enforcement of the statute.

{¶22} After the State filed an answer, IAFF #136 was given permission to intervene as a third-party defendant. All parties then filed cross-motions for summary judgment. Dayton noted in its motion that the city's population had been declining steadily since the 1970 census. As of November 2006, Dayton had 2,195 employees, 70% of whom resided in the Northeast and Southeast portions of the city. 819 of these individuals are employed in the police and fire departments, and 80% live in the Northeast and Southeast sections of the city.

{¶23} Dayton's motion also noted that in February 2005, the city had 2,500 vacant residential properties. Dayton's economic expert predicted an adverse effect on the city's population, property values, and tax revenues if the residency requirement were abolished.

{¶24} According to the State, the General Assembly found that 125 cities and 13 villages in Ohio subject employees to residency requirements. The General Assembly also made the following legislative comments when it enacted S.B. 82:

{¶25} "Section 2. In enacting section 9.481 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize both of the following:

{¶26} "(A) The inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution.

{¶27} "(B) Section 34 of Article II, Ohio Constitution, specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees, and that no other provision of the Ohio Constitution impairs or limits this power, including

Section 3 of Article XVIII, Ohio Constitution.

{¶28} "Section 3. The General Assembly finds, in enacting section 9.481 of the Revised Code in this act, that it is a matter of statewide concern to generally allow the employees of Ohio's political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those public employees."

{¶29} In June 2007, the trial court granted summary judgment in favor of the State and IAFF #136, and denied Dayton's motion for summary judgment. The court concluded that R.C. 9.481 was properly enacted under the "general welfare" clause of Section II, Article 34 of the Ohio Constitution, which prevails over the "Home Rule" provision in Section 3, Article XVIII of the Ohio Constitution. The court further concluded that even if Section 34 does not control, R.C. 9.481 is a general law that takes precedence over Dayton's City Charter. Finally, the trial court held that R.C. 9.481 does not violate the Uniformity Clause of Section 26, Article II of the Ohio Constitution.

{¶30} Dayton appealed from the decision and also requested a stay of the trial court's decision pending appeal. A stay was granted in August 2007.

II

{¶31} Dayton's First Assignment of Error is as follows:

{¶32} "THE TRIAL COURT ERRED IN FINDING THAT R.C. 9.481 WAS ENACTED PURSUANT TO SECTION 34, ARTICLE II OF THE OHIO CONSTITUTION."

{¶33} Under this assignment of error, Dayton contends that the trial court

improperly extended the scope of Section 34, Article II of the Ohio Constitution by interpreting “general welfare” to include every law that even tangentially affects employment. Dayton also claims that the phrase “general welfare” is ambiguous and that the history and legislative debates accompanying the passage of Section 34 reveal that “general welfare” pertains only to working conditions, not other aspects of employment like residency. Finally, Dayton argues that the “general law” test used in Home Rule cases applies to Section 34 analysis. According to Dayton, R.C. 9.481 is not a general law under “Home Rule” standards and cannot prevail over conflicting municipal regulations.

{¶34} Before we address these arguments, we should note that we have reviewed the briefs of the parties, as well as a brief filed by amicus curiae, Ohio Association of Professional Fire Fighters. We have also considered supplemental authority filed by both Dayton and the State.

{¶35} Turning now to the merits, we begin with the fundamental principle that courts “must ‘presume the constitutionality of lawfully enacted legislation.’ ” *Klein v. Leis*, 99 Ohio St.3d 537, 538, 2003-Ohio-4779, 795 N.E.2d 633, at ¶ 4 (citations omitted). Therefore, when “we consider the constitutionality of *** legislation passed by the General Assembly, we presume it to be constitutional and will not declare it to be unconstitutional unless it ‘appear[s] beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible.’ ” *Kelleys Island Caddy Shack, Inc. v. Zaino*, 96 Ohio St.3d 375, 376, 2002-Ohio-4390, 775 N.E.2d 489 at ¶ 10, quoting from *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 57 O.O. 134, 128 N.E.2d 59, paragraph one of the syllabus.

{¶36} R.C. 9.481 was enacted pursuant to Section 34, Article II of the Ohio Constitution, which provides that:

{¶37} “Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes [sic]; and no other provision of the constitution shall impair or limit this power.”

{¶38} Section 34 was among a number of constitutional amendments that were proposed by the 1912 Constitutional Convention and approved by voters. Another amendment adopted during this process was Article XVIII, which is known as the “Home Rule Amendment.” Section 3 of Article XVII is considered a key part of the Home Rule Amendment, and states that:

{¶39} “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.”

{¶40} Dayton contends that its residency requirement involves the exercise only of local self-government and must prevail over any conflicting state legislation. Conversely, the State and IAFF #136 argue that valid enactments under Section 34, Article II of the Ohio Constitution must prevail over conflicting local ordinances, due to the supremacy of Section 34.

{¶41} In *City of Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1, 539 N.E.2d 103 (*Rocky River IV*), the Ohio Supreme Court considered the constitutionality of a statute requiring binding arbitration of disputes between a city and its safety forces. 43 Ohio St.3d at 1-2.¹ The city argued that the statute

¹The Ohio Supreme Court issued four decisions in the *Rocky River* case, and the

unconstitutionally denied cities the power to determine municipal safety employee compensation, in violation of the Home Rule sections in Article XVIII. *Id.* at 12. However, the Ohio Supreme Court concluded that Section 34 of Article II governed, and that the Home Rule sections of the Constitution did not apply. *Id.* at 13.

{¶42} In discussing Section 34, the Supreme Court stressed that:

{¶43} “This provision constitutes a broad grant of authority to the legislature to provide for the welfare of all working persons, including local safety forces. * * * The provision expressly states in ‘clear, certain and unambiguous language’ that *no other provision* of the Constitution may impair the legislature’s power under Section 34. * * * This prohibition, of course, includes the ‘home rule’ provision contained in Section 3, Article XVIII.” *Rocky River IV*, 43 Ohio St.3d at 13, quoting from *State ex rel. Bd. of Trustees of Pension Fund v. Bd. of Trustees of Police Relief Fund* (1967), 12 Ohio St.2d 105, 106, 233 N.E.2d 135 (*Pension Fund*). The Ohio Supreme Court, therefore, concluded that because the statute in question was concerned with the “general welfare” of employees, “pursuant to Section 34, Article II, the power of the General Assembly to adopt the act *may not be affected in any way by the ‘home rule’ amendment.*” *Id.* (Emphasis in original.)

{¶44} In *Rocky River IV*, the city argued that Section 34 did not apply to conciliation, but was intended to apply only to matters involving minimum wage. In rejecting this contention, the Ohio Supreme Court first focused on the history of Section 34, including the constitutional debates. After discussing the constitutional debates in

one cited in the main text is the last decision issued, in May 1989. Because the last decision is commonly referred to as *Rocky River IV*, we will use that designation during the rest of our opinion.

detail, the Court stressed that:

{¶45} “But none of this really makes any difference. The language of Section 34 is so clear and unequivocal that resort to secondary sources, such as the constitutional debates, is actually unnecessary. Where the language of a statute or constitutional provision is clear and unambiguous, it is the duty of courts to enforce the provision as written. * * * ‘Debates of a constitutional convention are proper matter for consideration where they throw light on the correct interpretation of any provision of the Constitution, but if the provision is clear and may be read without interpretation, the discussion leading to its adoption is of no value, nor are the various statements by the members of the convention and the resolutions offered during the convention determinative of the meaning of the amendment.’ * * *

{¶46} “Regardless of what was said or not said during the debates, the unalterable fact remains that Section 34, as it was ultimately adopted, transcends the limitations urged by appellant. If the framers of our Constitution had intended this section to apply only to minimum wage, almost half of the forty-one words contained in this section must be regarded as mere surplusage, since it further provides that laws may be passed ‘fixing and regulating the hours of labor * * * and providing for the comfort, health, safety and general welfare of all employees * * *.’ Are we to believe, as appellant apparently does, that these words were not intended to have meaning? To ask the question is to answer it.” *Id.* at 15-16 (citations omitted).

{¶47} The Ohio Supreme Court went on to emphasize that:

{¶48} “The same may be said of the final phrase of Section 34, which states that ‘ * * * no other provision of the constitution shall impair or limit’ the General Assembly’s

power to pass laws concerning the welfare of employees. * * * How can it be seriously maintained that the home-rule amendment is somehow exempt from this mandate? Section 34 could not be clearer or more unequivocal. Appellant's contention, that Section 34 does not mean what it so obviously says, is indefensible. This is especially true when one considers that this court has already held that Section 34 contains 'clear, certain and unambiguous language' providing that 'no other provision of the Constitution may impair the intent, purpose and provisions' of Section 34, including the home-rule amendment. *Pension Fund, supra*, 12 Ohio St.2d at 107, 41 O.O.2d at 412, 233 N.E.2d at 137." *Rocky River IV*, 43 Ohio St.3d at 16.

{¶49} Dayton argues that we should adopt the view of the dissent in *Rocky River IV*, which argued that an overly broad interpretation of "general welfare" makes the remaining parts of Section 34, as well as Section 35, Article II of the Ohio Constitution "mere surplusage." *Id.* at 28, n. 35 (Wright, dissenting). Justice Wright further argued in his dissent in *Rocky River IV* that the drafters of Section 34 intended to limit the General Assembly specifically to "wages, hours, and sanitary conditions in industry." *Id.*

{¶50} This is the view recently taken in *Lima v. State*. ___ Ohio App.3d ___, 2007-Ohio-6419, ___ N.E.2d ___. In *Lima*, the Third District Court of Appeals concluded after a lengthy analysis, that:

{¶51} "R.C. 9.481 was not validly enacted pursuant to Article II, Section 34 of the Ohio Constitution, because Section 34's language, legislative history, and case law support finding that laws providing for the "general welfare of all employes" [sic] must have, at minimum, some nexus between their legislative end and the working environment." 2007-Ohio-6419, at ¶ 88.

{¶52} The Third District used four methods of interpretation in reaching this conclusion: (1) the common definition of “employee”; (2) “*noscitur a sociis*,” which instructs courts to determine the meaning of statutory phrases by their immediately surrounding words; (3) the “legislative history” of Section 34; and (4) case law interpreting Section 34.

{¶53} The Third District conceded that “general welfare” is a broad term, but observed that the language in Section 34 is limited by its subject matter. The Third District thus framed the issue as follows:

{¶54} “The general-welfare clause’s plain language requires that the General Assembly enact laws providing for the general welfare ‘of all employes.’ [sic] Lima’s assignment of error, thus, raises the issue of whether the term ‘employes’ [sic] in Section 34 means employees acting within the scope of their employment (i.e. within the working environment) or whether ‘employes’ [sic] refers to the status of being an employee, which transcends any particular locus. In other words, does the term ‘employes’ [sic] refer to the status of being an employee 24 hours per day, which attaches at hiring and sheds at firing (‘employee’ in its broadest sense), or does the term have a more limited meaning, which is intricately tied to a particular locus; here, the work environment? If the later interpretation is correct, the plain language would support finding that laws passed pursuant to Section 34’s general-welfare clause must address issues related to the employees’ working environment as Lima argues. If the former interpretation is correct, then the plain language would support finding that laws passed pursuant to Section 34 can address issues beyond the employees’ working environment as the state argues.” *Id.* at ¶ 28.

{¶55} After reviewing some common definitions of “employee,” the Third District concluded that the definitions did not resolve the scope of the term as used in Section 34. The Third District then focused on “*noscitur a sociis*,” and concluded that because the first and second clauses of Section 34 deal with working terms and conditions “within” the employment environment, the General Assembly would be limited to enacting laws that affect employees’ “work environment conditions.”² *Id.* at ¶ 35.

{¶56} Finally, the Third District reviewed historical circumstances in the early 1900s and the content of debates that occurred during the 1912 Constitutional Convention. *Id.* at ¶ 37-47. In this regard, the Third District again concluded that Section 34 was intended to empower the General Assembly with legislative authority only over labor hours, a minimum wage, and the working environment itself. *Id.* at ¶ 46.

{¶57} As we noted, this is the view taken by the dissent in *Rocky River IV*. In arguing that the legislature could not enact compulsory arbitration legislation that would prevail over conflicting municipal law, Justice Wright’s dissent in *Rocky River IV* suggested that “any fair-minded reader of the debates could only conclude that * * * [Section 34] refers to wages, hours and sanitary conditions in industry.” *Rocky River IV*, 43 Ohio St.3d at 28 (Wright, dissenting). However, this was not the view adopted by the majority of the Ohio Supreme Court.

{¶58} Justice Wright also reviewed case law interpreting Section 34. Like the Third District, Justice Wright concluded that Section 34 is limited in scope to “the minimum wage, hours of labor, or safety conditions.” *Id.* at 35. Compare *Lima*, 2007-

²The Third District further concluded that the words within the “general welfare clause” itself (“health, safety, and comfort”) also relate to “work environment” conditions.” *Id.* at ¶ 35.

Ohio-6419, at ¶ 54 (stating that “Section 34 general welfare case law is limited to employee economic welfare.”) Again, this was not the view expressed by the majority opinion in *Rocky River IV*, and we are bound by that decision until it is reversed or overruled. See, e.g., *Natl. City Bank v. Rhoades*, 150 Ohio App.3d 75, 84, 2002-Ohio-6083, 779 N.E.2d 799, at ¶ 31; *Louis A. Green, P.S. v. State Bd. of Registration for Professional Engineers and Surveyors*, Greene App. No. 2006-Ohio-1581, at ¶ 20; and *State v. Davis*, Clark App. No. 2006 CA 69, 2007-Ohio-1030, at ¶ 43 (all referring to the binding effect of Ohio Supreme Court decisions).

{¶59} Furthermore, we find a logical inconsistency in the Third District’s classification of the issues. In *Lima*, the Third District focused on whether “employee” refers to a status that attaches at hiring and sheds at firing (the State of Ohio’s position in *Lima*), or whether “employee” is tied to a particular locus – the working environment (the City of Lima’s position). The Third District concluded that in the first situation, Section 34’s “plain language” would “support finding that laws passed pursuant to Section 34 can address issues beyond the employees’ working environment.” *Lima*, 2007-Ohio-6419, at ¶ 28. However, the Third District also stated that in the second situation, Section 34’s “plain language” would “support finding that laws passed pursuant to Section 34’s general-welfare clause must address issues related to the employees’ working environment.” *Id.*

{¶60} We find it difficult to understand how statutory language can be described as “plain” if it can be read to support each of two contrary positions. Moreover, if language is plain, it must be applied as written. See, e.g., *State v. Tuomala*, 104 Ohio St.3d 93, 96, 2004-Ohio-6239, 818 N.E.2d 272, at ¶ 11-12, and *In re Blue Flame Energy*

Corp., 171 Ohio App.3d 514, 536, 2006-Ohio-6892, 871 N.E.2d 1227, at ¶ 43. As we have already stressed, the Ohio Supreme Court concluded in *Rocky River IV* that the language in Section 34 is unambiguous and may not be impaired by the Home Rule Amendment. *Rocky River IV*, 43 Ohio St.3d at 16.

¶61 In 1999, the Ohio Supreme Court again rejected attempts to restrict Section 34, stressing that Section 34 has repeatedly been interpreted as a “broad grant of authority to the General Assembly, not as a limitation on its power to enact legislation.” *Am. Assn. Of Univ. Professors, Central State Univ. Chapter v. Central State Univ.*, 87 Ohio St.3d 55, 61, 1999-Ohio-248, 717 N.E.2d 286. In *Central State Univ.*, the American Association of University Professors (AAUP) alleged that the General Assembly had violated Section 34 by enacting legislation that burdened state employees. The burden consisted of an increase in the employees’ instructional workloads. The Ohio Supreme Court rejected the contention that Section 34 restricts the legislature solely to the enactment of laws benefitting employees, rather than burdening employees as well. 87 Ohio St.3d at 60. In this regard, the court noted that:

¶62 “The General Assembly routinely enacts legislation that serves precisely the purpose AAUP would have us declare impermissible. R.C. 3319.22, for instance, allows rules imposing continuing education requirements upon teachers; R.C. 109.801 requires police officers to undergo annual firearm training; public employees are limited by R.C. 102.03 in gifts they may receive; and classified employees are limited in their solicitations of political contributions under R.C. 124.57. Furthermore, employees of Head Start agencies and out-of-home child care employees must submit to criminal record checks (R.C. 3301.32 and 2151.86); teachers and other school employees may

be required to undergo physical examinations in certain instances at the discretion of school physicians (R.C. 3313.71); an employee who contracts AIDS from a fellow employee has no cause of action in negligence against his employer (R.C. 3701.249); and board of health employees dealing with solid and infectious waste are required to complete certain training and certification programs (R.C. 3734.02).

{¶63} “These statutes provide only a few examples of laws burdening employees based upon legislative decisions to regulate the employment sector in the public interest. None of these statutes was enacted to benefit employees, but there can be no question that they constitute important legislation that the General Assembly has the constitutional authority to enact.” 87 Ohio St.3d at 61.

{¶64} Some of the statutes mentioned by the Ohio Supreme Court bear no more “nexus” to the conditions of the “work environment” than the residency provisions in R.C. 9.481. *Lima*, 2007-Ohio-6419, at ¶ 18. For example, R.C. 102.03 places restrictions on the outside employment of various public employees for as long as twenty-four months after they leave public service. Likewise, granting immunity to employers for negligent transmission of the AIDS virus by fellow employees does not bear a significant nexus to the work environment itself. Nonetheless, the legislature’s power to routinely enact these measures under Section 34 has been upheld. *Central State Univ.*, 87 Ohio St.3d at 61. The fact that the legislative ends do not bear a “nexus” to the conditions of the working environment does not mean that the legislature’s goals in enacting these statutes are irrelevant. However, contrary to the Third District’s conclusion, this does mean that Section 34 is not limited solely to legislation that bears a nexus to the conditions of the working environment as opposed to the status of being an “employee”

– which attaches at hiring and sheds at firing. *Lima*, 2007-Ohio-6419, at ¶ 28.

{¶65} In a recent decision, the Ninth District Court of Appeals employed a different analysis in assessing the constitutionality of R.C. 9.481. The issue before the Ninth District Court of Appeals was the same – whether the General Assembly acted within the authority granted by Section 34, Article II of the Ohio Constitution. See *State v. Akron*, Summit App. No. 81506, 2008-Ohio-38, at ¶ 9. In *Akron*, the Ninth District Court of Appeals agreed that *Rocky River IV* had taken an expansive view of the General Assembly's power under Section 34. *Id.* at ¶¶15-18. However, the Ninth District Court of Appeals concluded that the phrase “general welfare” in Section 34 is not without limits. *Id.* at ¶ 18.

{¶66} The Ninth District Court of Appeals stressed that while the term “general welfare” appears to be all-encompassing, it “cannot reasonably encompass everything that arguably benefits some employees.” *Id.* Instead, some boundaries must exist. To decide the boundaries, the Ninth District Court of Appeals looked to the “common welfare” clause of the preamble to the Ohio Constitution. In this regard, the Ninth District Court of Appeals observed that:

{¶67} “While Article II [,] Section 34 explicitly authorizes legislation for the general welfare of employees, legislation adopted under it must also either secure the blessings of freedom to citizens of Ohio or further the ‘general welfare’ of the state. ‘All government power derives from the people, but these grants of power are limited.’ * * * The scope of the power granted Ohio by its citizens is found in the preamble of the Ohio Constitution:

{¶68} “ ‘We, the people of the State of Ohio, grateful to Almighty God for our

freedom, to secure its blessings and promote our common welfare, do establish this Constitution.’” Id. at ¶ 19 (citations omitted).

{¶69} Based on the preamble, the Ninth District Court of Appeals concluded that Ohio’s Constitution only authorizes laws securing freedom for citizens or furthering their common welfare, and that all laws are subject to this limitation. Id. The Ninth District Court of Appeals also found no barrier to this line of thought in the Ohio Supreme Court’s previous decisions. In this regard, the Ninth District Court of Appeals noted that:

{¶70} “In interpreting the General Assembly’s broad authority under Article II Section 34, the Ohio Supreme Court has recognized the societal notion of ‘common welfare.’ Although the Court has not explicitly articulated a limitation on the General Assembly’s authority under Article II Section 34 to enact legislation for the ‘general welfare’ of employees, it has been unnecessary for it to do so in the prior cases before it.” Id. at ¶ 20.

{¶71} Consistent with the “common welfare” limitation, the Ninth District Court of Appeals distinguished *Rocky River IV*, *Pension Fund*, and *Central State Univ.* because those cases involved comprehensive legislation addressing significant social issues impacting the public at large. Id. at ¶ 21-24. In contrast, the Ninth District Court of Appeals concluded that R.C. 9.481 did not affect common welfare. The Ninth District Court of Appeals concluded that the “sole purpose” of R.C. 9.481:

{¶72} “is to invalidate employee residency requirements by political subdivisions. This legislation does not address any significant social issues impacting the public at large; it is not part of a comprehensive legislative scheme, but deals with a single issue; and it applies to a relatively small segment of the population (those who are employed

by political subdivisions, are subject to residency requirements, and would choose to live elsewhere if allowed to do so).

{¶73} “* * * unlike any of the legislation that the Supreme Court has determined falls within the scope of Article II [,] Section 34 as providing for the general welfare of employees, Section 9.48.1 does not pertain to the protection or regulation of any existing right or obligation of the affected employees. Instead, it is an attempt to circumvent municipal home rule authority and reinstate a ‘right’ that the employees voluntarily surrendered when they accepted government employment.” *Id.* at ¶ 24-25 (bracketed material added).

{¶74} We note that a preamble is “ ‘the introductory part of a statute, ordinance, or regulation that states the reasons and intent of the law or regulation or is used for other explanatory purposes.’ ” *Christy v. Summit Cty. Bd. of Elections*, 77 Ohio St.3d 35, 39, n.1, 1996-Ohio-357, 671 N.E.2d 1, citing Webster's Third New World International Dictionary (1986) 1783. The view of the Ninth District Court of Appeals on the effect of the preamble is supported by *Palmer v. Tingle* (1896), 55 Ohio St. 423, 45 N.E. 313. In *Palmer*, the Ohio Supreme Court indicated that the preamble of Ohio's Constitution limits the powers of the General Assembly. Specifically, the court stated that:

{¶75} “It is worthy of notice that the constitution is established to secure the blessings of freedom, and to promote the common welfare. As the constitution must be regarded as consistent with itself throughout, it must be presumed that the laws to be passed by the general assembly under the powers conferred by that instrument are to be such as shall secure the blessings of freedom, and promote our common welfare.”

55 Ohio St. at 440.

{¶76} *Rocky River IV* did not consider any limitations imposed on Section 34 by the concept of “common welfare” – presumably because the Ohio Supreme Court did not need to do so. As the Ninth District Court of Appeals noted, the statute involved in *Rocky River IV* was part of comprehensive legislation encompassing an entire chapter of the Ohio Revised Code. *Akron*, 2008-Ohio-38, at ¶ 21. See, also, *Rocky River IV*, 49 Ohio St.3d at 41 (noting that the statutory section involved in the case was part of the Ohio Public Employees Collective Bargaining Act, R.C. Chapter 4117). The idea of legislating for “common welfare” also appears in *Central State Univ.*, as the court focused on the fact that statutes previously upheld as valid had been “based upon legislative decisions to regulate the employment sector *in the public interest.*” 87 Ohio St.3d at 61 (emphasis added).

{¶77} Nevertheless, we are not persuaded that the grant of authority to the General Assembly, in Section 34, Article II of the Ohio Constitution, to pass laws providing for the general welfare of all employees, is subject to a limitation based in the preamble to the Ohio Constitution. The last clause of Section 34, Article II unequivocally declares that: “and no other provision of the constitution shall impair or limit this power.”

The declaration includes the preamble to the Ohio Constitution as well as the Home Rule amendment. The effect is to render the grant of legislative power contained in Section 34, Article II plenary; no limitations to that power external to the language therein may be imposed.

{¶78} In short, Section 34, Article II of the Ohio Constitution gives the General Assembly the power to provide that employees of political subdivisions of the State shall

be free to reside wherever they choose, since that is a provision providing for their general welfare. Dayton's First Assignment of Error is overruled.

III

{¶79} Dayton's Second Assignment of Error is as follows:

{¶80} "THE TRIAL COURT ERRED IN FINDING THAT R.C. 9.481 SATISFIES THE THREE PART TEST ESTABLISHED IN CITY OF CANTON V. STATE OF OHIO AND PREEMPTS THE REQUIREMENT SET FORTH IN THE CITY'S CHARTER THAT ALL CITY EMPLOYEES MUST RESIDE WITHIN THE CITY LIMITS."

{¶81} Under this assignment of error, Dayton contends that its residency rule is a matter of local self-government and that the trial court erred in finding that R.C. 9.481 is a general law that takes precedence over Dayton's city charter. In response, the State and IAFF #136 contend that R.C. 9.481 regulates matters of statewide concern and is a general law superseding Dayton's home rule powers. In this regard, the State also claims that R.C. 9.481 has extra-territorial effects because it addresses the labor relationship between public sector employers and employees and because society is no longer concentrated in insular, local communities.

{¶82} In view of our disposition of Dayton's First Assignment of Error, this assignment of error has become moot. R.C. 9.481 prevails over Dayton's city charter by reason of Section 34, Article II of the Ohio Constitution; it is not necessary to establish that it is a general law for it to prevail.

{¶83} Dayton's Second Assignment of Error is overruled as moot.

{¶84} Dayton's Third Assignment of Error is as follows:

{¶85} "THE TRIAL COURT ERRED IN FAILING TO FIND THAT R.C. 9.481 IS AN IMPERMISSIBLE ATTEMPT BY THE LEGISLATURE TO INTERPRET THE CONSTITUTION AND CREATE A RIGHT AT VARIANCE WITH BOTH THE UNITED STATE AND OHIO SUPREME COURTS."

{¶86} Under this assignment of error, Dayton contends that the legislature impermissibly interfered with the role of the judiciary by enacting legislation that interprets Article I, Section I of the Ohio Constitution in a way that is inconsistent with existing judicial decisions. The State responds by noting that Dayton failed to raise a "separation of powers" argument in its complaint. Citing *Johns v. Univ. of Cincinnati Med. Assn., Inc.*, 101 Ohio St.3d 234, 2004-Ohio-824, 804 N.E.2d 19, the State also points out that the General Assembly may pass any law that is not constitutionally forbidden.

{¶87} In this regard, we agree with the State. In *Johns*, the Ohio Supreme Court stated that " 'the state Constitution is primarily a limitation on legislative power of the General Assembly; therefore, the General Assembly may pass any law unless it is specifically prohibited by the state or federal Constitutions.' " *Id.* at ¶ 35 (citations omitted). If a particular law conflicts with existing case law, that is a matter for the courts to resolve. Consistent with this principle, the Ohio Supreme Court has declared legislation invalid or unconstitutional on numerous occasions. The General Assembly has also exercised the option of enacting legislation to supersede decisions with which it disagrees. A classic example of this interplay is the uninsured/underinsured motorists

statute, which has long been a battleground between the legislature and courts. See R.C. 3937.18 and its uncodified law, indicating an intention to supersede various Ohio Supreme Court decisions, including *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.*, 85 Ohio St.3d 660, 1999-Ohio-292, 710 N.E.2d 1116, and *Savoie v. Grange Mut. Ins. Co.* (1993), 67 Ohio St.3d 500, 620 N.E.2d 809.

{¶88} Dayton points to no federal or state constitutional provisions that specifically prohibit enactment of R.C. 9.481. As a result, the General Assembly was not precluded from enacting the statute.

{¶89} Dayton's Third Assignment of Error is overruled.

V

{¶90} Dayton's Fourth Assignment of Error is as follows:

{¶91} "THE TRIAL COURT ERRED IN FINDING THAT R.C. 9.481 DOES NOT VIOLATE SECTION 26, ARTICLE II OF THE OHIO CONSTITUTION."

{¶92} Dayton contends under this assignment of error that the trial court erred in failing to find that R.C. 9.481 violates the Uniformity Clause of the Ohio Constitution. In this regard, Dayton argues that R.C. 9.481 is unconstitutional because it creates arbitrary distinctions between full-time and part-time municipal employees. As we mentioned, R.C. 9.481(B)(1) provides that political subdivisions may not require employees to reside in any specific area of the state as a condition of employment. However, certain individuals, defined as either volunteers or persons with less than full-time employment, may be subjected to residency requirements.

{¶93} Section 26, Article II of the Ohio Constitution states that:

{¶94} “All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.”

{¶95} A two-part test is applied to assess constitutionality under the Uniformity Clause: “(1) whether the statute is a law of a general or special nature, and (2) whether the statute operates uniformly throughout the state.” *Desenco, Inc. v. Akron*, 84 Ohio St.3d 535, 541, 1999-Ohio-368, 706 N.E.2d 323 (citations omitted).

{¶96} The first part of the test refers to subject matter, not geographical application. 84 Ohio St.3d at 542. In deciding if a given subject matter is general or special, the Ohio Supreme Court has said that a matter is of a general nature “if the subject does or may exist in, and affect the people of, every county, in the state.” *Id.* “On the contrary, if the subject cannot exist in, or affect the people of every county, it is local or special.” *Id.* Based on this standard, which differs from the more complex criteria used to decide if laws are “general” for purposes of the Home Rule Amendment, we conclude that the subject matter of R.C. 9.481 is general because the subject of the statute (residency) does or may exist in and affect the people of every county in the state.

{¶97} In *Austintown Twp. Bd. of Trustees v. Tracy*, 76 Ohio St.3d 353, 356, 1996-Ohio-74, 667 N.E.2d 1174, the Ohio Supreme Court stressed that “uniform operation throughout the State” means “universal operation as to territory; it takes in the whole state. And, as to persons and things, it means universal operation as to all persons and things in the same condition or category. When a law is available in every

part of the state as to all persons and things in the same condition or category, it is of uniform operation throughout the state.”

{¶98} Again, under this definition, we conclude that R.C. 9.481 does not violate the Uniformity Clause. Although R.C. 9.481 distinguishes among “full-time” employees, “part-time” employees, and “volunteers,” the law is available in every part of Ohio to all individuals occupying the same position or category. In other words, all part-time employees or volunteers in every municipality in Ohio may be subjected to a residency requirement, while full-time employees may live where they choose.

{¶99} Dayton contends that these classifications violate the Uniformity Clause because they are arbitrary. However, the Ohio Supreme Court has rejected the idea that arbitrary classifications violate the Uniformity Clause. *Austintown*, 76 Ohio St.3d at 358. In *Austintown*, the court stressed that:

{¶100} “arbitrary classifications violate the Uniformity Clause only where those classifications are contained in a statute first deemed to be special or local as opposed to general. * * *

{¶101} “Further, acceptance of the contention that the Uniformity Clause bars all legislatively created classifications deemed by the judiciary to be arbitrary would improperly and unnecessarily expand the scope of that constitutional provision. Traditionally, and more appropriately, it is equal protection analysis, rather than Uniformity Clause analysis, which mandates inquiry into whether legislatively created classifications of similarly situated persons bear a rational relationship to legitimate governmental purposes.” *Id.* at 358-59.

{¶102} Based on the Ohio Supreme Court’s instruction in *Austintown*, we will not

consider whether the classifications in R.C. 9.481 are arbitrary. We also note that Dayton failed to challenge R.C. 9.481 on equal protection grounds.

{¶103} In light of the above discussion, we conclude that R.C. 9.481 does not violate the Uniformity Clause. Accordingly, Dayton's Fourth Assignment of Error is overruled.

VI

{¶104} All of Dayton's assignments of error having been overruled, the judgment of the trial court is Affirmed.

.....

DONOVAN, J., concurs.

GRADY, J., dissenting:

{¶105} The question presented in this appeal is whether the residency requirement in the Charter of the City of Dayton survives the prohibition against such regulations in R.C. 9.481. That question presents two issues of law. The first issue is whether the City's residency requirement is entitled to the protection of the Home Rule Amendment, Section 3, Article XVIII of the Ohio Constitution. If that protection applies, then the second issue for determination is whether R.C. 9.481 was enacted pursuant to the authority conferred on the General Assembly by Section 34, Article II, which trumps the protections afforded local legislation by the Home Rule Amendment.

{¶106} Section 3, Article XVIII provides:

{¶107} "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.”

{¶108} In *City of Canton v. State of Ohio* (2002), 95 Ohio St.3d 149, the Supreme Court held:

{¶109} “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.*, Syllabus by the Court.

{¶110} R.C. 9.481 fails the tests for a general law in several ways, but most clearly because it does not “set forth police, sanitary, or similar regulations, (but) purport(s) only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations.” By its terms, R.C. 9.481 is wholly and exclusively prohibitory. Therefore, R.C. 9.481 is not a general law for purpose of Section 3, Article XVIII that nullifies the residency requirement in the Charter of the City of Dayton.

{¶111} Even if R.C. 9.481 were found to satisfy the test for a “general law,” it would not prevail over the conflicting provisions of Dayton’s residency requirement for its employees, because the City’s residency requirement is an exercise of its proprietary authority which is protected by Section 3, Article XVIII, from the State’s exercise of its police power, absent some other prohibition.

{¶112} The general laws of the State to which Section 3, Article XVIII refers “are

obviously such as refer to police, sanitary, and other similar regulations which apply uniformly throughout the State." *Fitzgerald v. City of Cleveland* (1913), 88 Ohio St.338, 359. They are expressions of "that inherent sovereignty which it is the right and duty of the government or its agents to exercise whenever public policy in a broad sense demands, for the benefit of society at large, regulations to guard its morals, safety, health, order, or to insure in any respect such economic conditions as an advancing civilization of a highly complex character requires." *Miami County v. City of Dayton* (1915), 92 Ohio St. 217, 223-224.

{¶113} Municipalities may likewise exercise the police power. E.G., *State ex rel. Tomino v. Brown* (1989), 47 Ohio St.3d 119. However, the grant to municipalities of "all power of local self-government" in Section 3, Article XVIII is broader than the authority to exercise the police power. Therefore, not all local legislation is necessarily an exercise of a municipality's police power. Further, it is only those enactments of "local police, sanitary and similar regulations" which are subject to the superseding provisions of the Home Rule Amendment when they conflict with a general law. *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191.

{¶114} The police power is a governmental power, the power to prescribe rules regulating the conduct of the public generally in order to provide for the common welfare of the governed. *State v. Martin* (1958), 168 Ohio St. 37. As applied to business activities, it is the power to regulate them as opposed to the power to engage in them. *State of Ohio v. Helvering* (1934), 292 U.S. 360, 54 S.Ct. 725, 78 L.Ed. 1307. When engaged in a business activity, a municipal corporation acts as a proprietor, not a governmental entity performing a regulatory function.

{¶115} Notwithstanding the fact that it is a municipality, and the fact that the City of Dayton's residency requirement regulates who may be its employees, that determination is an exercise of the City of Dayton's proprietary authority, not an exercise of its police powers. The City's exercises of its authority as a proprietor are protected by the Home Rule Amendment from interference by General Assembly through an exercise of the state's police powers, except to the extent that the City's exercise of its proprietary authority violates some other constitutional prohibition, such as the Equal Protection Clause, which the General Assembly may use its police powers to enforce. No such violation is argued. Therefore, regardless of any conflict with R.C. 9.481, that section, being an exercise of the police power, does not supersede the City's residency requirement pursuant to Section 3, Article XVIII, because the residency requirement is an exercise of the City's authority to act for its own proprietary purposes. The action the City took in adopting its residency requirement for employees is no different in kind and character than deciding from whom it will purchase its supplies, which is plainly a matter protected from state intrusion by the Home Rule Amendment.

{¶116} Even if R.C. 9.481 fails as a general law for purposes of home rule analysis, it nevertheless prevails over the protections the Home Rule Amendment provides if the General Assembly passed R.C. 9.481 pursuant to the authority conferred on it by Section 34, Article II. That section states:

{¶117} "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provisions of the constitution shall impair or limit this power."

{¶118} The first thing to understand about Section 34, Article II, is that, as a grant

of authority to the General Assembly, it is redundant. Section 1, Article II of the Ohio Constitution provides: "The legislative power of the state shall be vested in a General Assembly. . ." That grant of authority was originally provided by Article I, Section 1 of the 1802 Ohio Constitution. *Swisher*, Ohio Constitution Handbook (1990), Editor's Comment, p. 209. The "legislative power" conferred on the General Assembly includes an inherent power to prescribe regulations that promote the education, health, safety, peace, morals, and general welfare of the community, which is exercised under the rubric "police power." *State v. Stouffer* (1971), 28 Ohio App. 2d 229. The General Assembly's exercise of the police power is not plenary, but is subservient to other provisions of the Ohio Constitution. *French v. Dwiggins* (1984), 9 Ohio St.3d 32.

{¶119} The police power conferred on the General Assembly by Section 1, Article II is fully sufficient to authorize any legislation comprehended by Section 34, Article II. However, because of apprehensions that other provisions of the Constitution might impair the General Assembly's exercise of its Section 1, Article II powers for that purpose, Section 34, Article II was adopted. Steinglass and Scarselli³ explain.

{¶120} "The adoption of Article II, section 34 was one of the major achievements of the Progressive movement at the 1912 convention. In 1912 shortly after the Constitutional Convention convened but long before it completed its work, the Ohio Supreme Court in *State, ex rel. Yaple v. Creamer* (1912)⁴ upheld the constitutionality of Ohio's first workers' compensation laws. However, the statute was voluntary, and the

³Steven H. Steinglass and Gino J. Scarselli, "The Ohio State Constitution, A Reference Guide," Pralger Publishers (2004), at p. 152.

⁴*Yaple v. Creamer*, (1912), 85 Ohio St. 349.

court suggested that coercive legislation would violate the Ohio Constitution (ibid.; see also *Taylor v. Academy Iron & Metal Co.* 1988: 151).⁵ Section 34 insulated a *mandatory* program of workers' compensation from constitutional attack by providing 'a broad grant of authority to the legislature to provide for the welfare of all working persons' (*Rocky River v. State Employment Relations Board*, 1989): 13-14)⁶ and by 'empower[ing] the General Assembly to regulate the employment relationship without running afoul of the now-obsolete judicial doctrine of 'economic substantive due process' (*Brady v. Safety-Kleen Corp.*, 1991: 639).⁷

{¶121} Section 34 accomplished the latter purpose by containing a statement, identical to the one in section 33, that 'no other provision of the constitution shall impair or limit this power.' This provision insulated the program from claims that legislation enacted under its authority violated other provisions of the Ohio Constitution."

{¶122} The history and origin of Section 34, Article II are germane to its coverage. An Editor's Note to the discussion of Section 34, Article II in Baldwin's Ohio Revised Code Annotated states that it was among "[t]he key reforms advocated by organized labor in the late nineteenth and early twentieth centuries (that) included a living wage, decent working conditions, and job security." Those matters concern the working environment. Since its adoption, judicial approval of legislation enacted pursuant to Section 34, Article II has been confined to matters that involve such conditions of employment. See: *Rocky River v. State Employment Relations Board* (1989), 43 Ohio

⁵*Taylor v. Academy Iron & Metal Co.* (1988), 36 Ohio St.3d 149.

⁶*Rocky River v. State Employment Relations Board*, (1989), 43 Ohio St.3d

⁷*Brady v. Safety-Kleen Corp.* (1991), 59 Ohio St.3d 705.

St.3d 1, 35 (Holmes, J., dissenting).

{¶123} The trial court in the present case departed from that standard, reasoning that the “general welfare of all employees” clause in Section 34, Article II authorized enactment of R.C. 9.481, prohibiting limitations on the place of residence of municipal employees. The trial court erred when it so held, because application of a general provision to facts beyond the range of those in special provisions to which it is attached lets the tail wag the dog, and risks extending a general provision to matters beyond the intention of those who adopted it. Determination of that intention is the goal of the canon of interpretation *noscitur a sociis*: to interpret a general term to be similar to more specific terms in a series. Applying that principle, and consistent with its reference specifically to laws “establishing a minimum wage, and providing for the comfort, health, (and) safety” of all employees, the “general welfare” clause of Section 34, Article II authorizes only legislation regulating conditions of employment within the working environment.

{¶124} R.C. 9.481 goes beyond those limits by prohibiting municipal legislation that places limits on where employees of the municipality may reside. Such regulations apply to conditions for employment, not to conditions of employment, which are those that pertain to the working environment. Therefore, R.C. 9.481 was not validly enacted pursuant to Section 34, Article II, and its superseding provision does not trump the protections the Home Rule Amendment affords to Dayton's residency requirement. Instead, and necessarily, R.C. 9.481 was enacted pursuant to the authority conferred on the General Assembly by Section 1, Article I, and to that extent is subject to Section 3, Article XVIII, the Home Rule Amendment.

{¶125} I would hold that the City of Dayton’s residency requirement for its employees, not being a “local police, sanitary or similar regulation,” is not subject to the superseding provisions applicable to conflicts with general laws in Section 3, Article XVIII, and that R.C. 9.481 cannot supersede the Dayton residency requirement because that section, being only prohibitory, is not a general law given preference over local enactments by Section 3, Article XVIII. Further, because R.C. 9.481 exceeds the authority conferred on the General Assembly by Section 34, Article II, the superseding provisions of Section 34, Article II cannot apply to deny the City of Dayton’s residency requirement for its employees the protections it is afforded by Section 3, Article XVIII, the Home Rule Amendment. I would reverse the declaratory judgment the trial court granted for those reasons, and remand the case to the common pleas court to enter a declaratory judgment consistent with those reasons.

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Copies mailed to:

Thomas M. Greene
Jane M. Lynch
Jared A. Wagner
Nancy Hardin Rogers
Frank M. Strigari
Julie Kelley Cannatti
Trisha M. Duff
Henry A. Arnett
Hon. Jeffrey E. Froelich

In the
Supreme Court of Ohio

CITY OF LIMA, OHIO,

Plaintiff-Appellee,

v.

STATE OF OHIO,

Defendant-Appellant.

Case No. **08-0128**

On Appeal from the
Allen County
Court of Appeals,
Third Appellate District

Court of Appeals Case
No. 1-07-21

**NOTICE OF APPEAL OF DEFENDANT-APPELLANT
STATE OF OHIO**

ANTHONY L. GEIGER* (0006150)

**Counsel of Record*

Director of Law

City of Lima, Ohio

209 North Main Street

Lima, Ohio 45801

419-221-5183

419-221-5176 fax

Counsel for Plaintiff-Appellee

City of Lima

MARC DANN (0039425)

Attorney General of Ohio

WILLIAM P. MARSHALL* (0038077)

Solicitor General

**Counsel of Record*

ROBERT J. KRUMMEN (0076996)

Deputy Solicitor

MICHAEL L. STOKES (0064792)

Assistant Solicitor

30 East Broad Street, 17th Floor

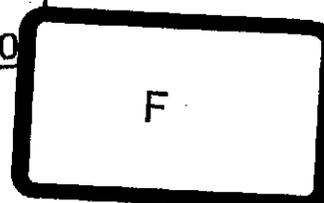
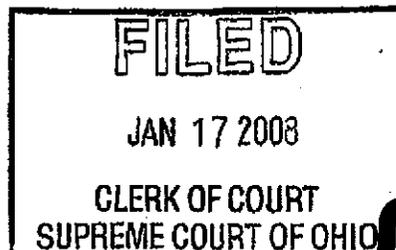
Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

Counsel for Defendant-Appellant

State of Ohio

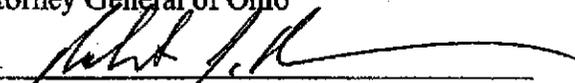


NOTICE OF APPEAL OF DEFENDANT-APPELLANT STATE OF OHIO

Defendant-Appellant State of Ohio gives notice of its claimed appeal of right and discretionary appeal to this Court, pursuant to Ohio Supreme Court Rules II(A)(2) and (3), from a Judgment Entry of the Allen County Court of Appeals, Third Appellate District, journalized in Case No. 1-07-21, *City of Lima v. State of Ohio*. That Judgment Entry was stamped "Filed" on December 3, 2007. The Judgment Entry and Opinion are attached to the Appellant-Defendant State of Ohio's Memorandum in Support of Jurisdiction. Reasons for this claimed appeal of right and discretionary appeal, including the substantial constitutional question and the great public and general interest involved in this case, are fully set forth in the accompanying Memorandum in Support of Jurisdiction.

Respectfully submitted,

MARC DANN (0039425)
Attorney General of Ohio



WILLIAM P. MARSHALL* (0038077)
Solicitor General

**Counsel of Record*

ROBERT J. KRUMMEN (0076996)

Deputy Solicitor

MICHAEL L. STOKES (0064792).

Assistant Solicitor

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

Counsel for Defendant-Appellant
State of Ohio

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal of Defendant-Appellant State of Ohio was served by U.S. mail this 17th day of January, 2008, upon the following counsel:

Anthony L. Geiger
Director of Law
City of Lima, Ohio
209 North Main Street
Lima, Ohio 45801

Counsel for Plaintiff-Appellee
City of Lima



Robert J. Krummen
Deputy Solicitor