

In the
Supreme Court of Ohio

STATE OF OHIO, et al., : Case No. 2008-0418
: :
Defendants-Appellants, : On Appeal from the
: : Summit County
v. : Court of Appeals,
: : Ninth Appellate District
CITY OF AKRON, et al., : :
: : Court of Appeals Case
Plaintiffs-Appellees. : No. 23660
: :

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

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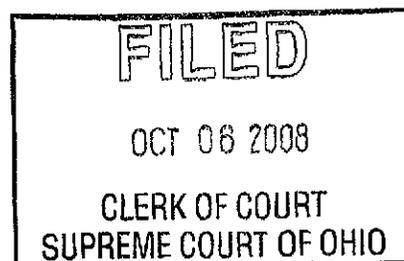


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INTRODUCTION

Article II, Section 34 of the Ohio Constitution grants the State authority to regulate for “the comfort, health, safety and general welfare of all employees.” This Court has “repeatedly interpreted” the provision as “a broad *grant* of authority to the General Assembly, not as a limitation on its power to enact legislation.” *Am. Ass’n of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ. (“AAUP”)*, 87 Ohio St. 3d 55, 61, 1999-Ohio-248. Consistent with that understanding, the General Assembly enacted the Freedom of Residency Act, R.C. 9.481 (“FRA”), to prevent cities from tethering municipal employment to local residency. Police officers, sanitation workers, and city clerks now have a statutory right to choose their neighbors, communities, and school districts without losing their eligibility for many public-sector positions.

In ignoring *AAUP*’s clear guidance and holding that the General Assembly did not have authority to pass the FRA, the City of Akron largely mimics the erroneous reasoning of a divided panel of the Ninth District. The City, like the appeals court, imposes an assortment of new conditions on legislation passed under Section 34: The legislation must “impact[] the public at large,” it must be “part of a comprehensive legislative scheme,” and it must “pertain to the protection or regulation of an[] existing right or obligation of the affected employees.” *State v. City of Akron*, 2008 Ohio App. Lexis 33, 2008-Ohio-38, ¶¶ 24-25. But these novel conditions are grounded in neither the text of Section 34 nor this Court’s decisions.

The City offers two other, equally flawed arguments: that the General Assembly lacks constitutional authority to enact civil service laws affecting municipalities, and that Section 34 confers only limited authority on the General Assembly to improve working conditions. Both arguments misunderstand this Court’s clear precedents. The FRA regulates a specific term and condition of the contractual relationship between public employers and their workers. Such

authority has long been recognized as within the province of the legislature under Section 34. See, e.g., *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. City of Cleveland*, 114 Ohio St. 3d 183, 2007-Ohio-3831, ¶ 78 (affirming statute granting sick leave to municipal employees); *AAUP*, 87 Ohio St. 3d at 61 (affirming state law mandating ten percent increase in undergraduate teaching activity among full-time and part-time faculty at public universities).

Because the General Assembly acted entirely within its constitutional authority when it banned residency requirements, the Court should reverse the appeals court's decision and affirm the General Assembly's ability to regulate the employment conditions of Ohio's public employees.

ARGUMENT

A. Article II, Section 34 confers on the General Assembly broad authority to regulate the employment sector, including the terms and conditions of the employer-employee relationship.

The City of Akron urges this Court to recognize three limitations on the General Assembly's authority to legislate for the general welfare of employees under Article II, Section 34. First, it argues that the State has no authority to preempt municipalities in matters pertaining to civil service. See Akron Br. at 22-28. Second, it contends that legislation under Section 34 must have some nexus to the workplace environment, adopting the Third District's formulation in *City of Lima v. State* (3d Dist.), 2007 Ohio App. Lexis 5626, 2007-Ohio-6419. See Akron Br. at 28-32. Third, it adopts the Ninth District's tripartite formula—the statute must be part of a comprehensive legislative scheme, which broadly impacts the public, and pertains to an existing right or obligation. See Akron Br. at 33-38. Each of these positions is flawed.

1. The City’s considerable reliance on *Canada* and its progeny is erroneous because those cases did not address Section 34.

The City’s primary argument is that the FRA addresses a matter of civil service, which falls within the exclusive province of municipalities to manage. The statute is therefore unconstitutional, the City says, irrespective of any grant of authority by Section 34. In crafting this argument, the City misreads *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191, and its progeny.

In *Canada*, this Court was asked to resolve a conflict between a state civil service law and a city charter governing the appointment of supervisory officers in a municipal police force. Consistent with Article XV, Section 10 of the Ohio Constitution, which requires that all civil service appointments be based on “merit and fitness” as determined by competitive examinations, the General Assembly enacted a law requiring that municipalities promote “the person receiving the highest rating” in the civil service examination. *Id.* at 192. The City of Columbus, however, directed that the appointment be made from a group of “three candidates standing highest on the eligible list.” *Id.* at 193. The source of the city’s authority was the Home Rule Amendment, which grants municipalities “authority to exercise all powers of local self-government.” Ohio Const., art. XVIII, § 3. The *Canada* Court held that the City of Columbus’s charter trumped the contrary state law because the establishment and operation of a police department was an “exercise of the power[] of local self-government” that prevailed over any residual state interest in ensuring local police officers’ proper enforcement of state laws. *Id.* at 200.

Conflict between a general state law and a municipality’s civil service ordinance was a consistent theme in all the post-*Canada* cases cited in the City’s brief. In resolving each of those disputes, this Court employed a fact-specific inquiry to decide whether the State’s asserted

interest was one of “statewide concern”: “A municipality is considered to have general home-rule authority to regulate the appointment, removal, qualifications, compensation, and duties of its officers and employment. . . . [T]his authority has been required to yield to general state laws where the municipal regulations have significant extraterritorial effects on areas of statewide concern” *State Personnel Bd. of Review v. Bay Vill. Civil Serv. Comm’n* (1986), 28 Ohio St. 3d 214, 216. If a statewide concern was present, the Court endorsed the State’s use of its police power to enact legislation that trumped the municipal ordinance. See *City of Cincinnati v. Ohio Council 8, AFSCME* (1991), 61 Ohio St. 3d 658, 662 (upholding state law listing those state statutes that would prevail over conflicting provisions in a collective bargaining agreement as a device to simplify administration of those agreements); *City of Kettering v. State Employment Relations Bd.* (1986), 26 Ohio St. 3d 50, 55 (holding that the Public Employees’ Collective Bargaining Act addressed a statewide concern of minimizing public-sector labor disputes). If no statewide concern was present, the Court held that the municipal ordinance took precedence under the Home Rule Amendment. See *Ohio Ass’n of Pub. Sch. Employees v. City of Twinsburg* (1988), 36 Ohio St. 3d 180, 185 (holding that municipality could, contrary to state law, “enact an ordinance limiting the jurisdiction of its civil service commission to only city employees” because the ordinance had no extraterritorial effects); *Bay Vill. Civil Serv. Comm’n*, 28 Ohio St. 3d at 217 (invalidating state law vesting state agency with investigative and removal authority over municipal civil service commissions because the investigation, appointment, and removal of commission members were not matters of statewide concern).

In none of these cases did the Court decide, much less issue an authoritative interpretation on, whether Section 34 would support the statutes at issue. Instead, in each case, the Court addressed whether the challenged statutes, as enacted by the General Assembly *under its general*

police powers, prevailed over a contrary home rule ordinance enacted by the municipality. But the majority opinions in *Canada*, *Kettering*, and *Twinsburg* did not even mention Section 34. And in *Bay Village*, although the State raised Section 34 as part of its argument defending the statute, the Court did not evaluate the argument. See 28 Ohio St. 3d at 215. Finally, in *Cincinnati*, the Court cited briefly to Section 34 as an alternative basis to affirm the constitutionality of the disputed statute. See 61 Ohio St. 3d at 662 (“We have also recognized that R.C. Chapter 4117 prevails over home-rule charters because it was enacted pursuant to Section 34.”).

In the seminal case concerning Section 34, this Court confirmed that “the provision constitutes a broad grant of authority to the legislature to provide for the welfare of all working persons.” *City of Rocky River v. State Employment Relations Bd.* (1989), 43 Ohio St. 3d 1, 13 (“*Rocky River IV*”). When the General Assembly wields its authority under this provision, it may enact laws with “a substantial infringement of local powers of self-government,” *id.* at 17, and such legislation is immune from home rule challenges brought by municipalities. *Id.* at 13.

Rocky River IV puts to rest the City’s repeated invocation of *Canada*. As the Court explained, “*Canada* is a case involving civil service and concerns Section 10, Article XV of the Ohio Constitution. It does not deal in any way with Section 34, Article II, which is so central to the case before us today.” *Id.* at 13 n.14. Put differently, whereas *Canada* and its progeny recognized that the Home Rule Amendment constrained the State’s authority to enact legislation under Section 10 of Article XV and its general police powers, *Rocky River IV* concluded that the Home Rule Amendment did not constrain the State’s authority to enact legislation under Section 34 of Article II. The lead question in this case is whether the General Assembly’s enactment of

the FRA can be sustained as a valid exercise of Section 34, and *Rocky River IV* controls the answer.

2. The Court has never interpreted the General Assembly's authority under Section 34 as limited to matters concerning the working environment.

The City next invites the Court to follow the Third District's crabbed interpretation of Section 34. In *City of Lima*, that court held 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." 2007-Ohio-6419 at ¶ 59. As the State explained in its merits briefs to that case, the "working environment" characterization conflicts with the text of Section 34 and this Court's precedents. See State Merit Br. at 11-17, *City of Lima v. State*, No. 2008-0128 (July 22, 2008).

The City first complains that the limits of the "general welfare" language in Section 34 have not been defined. But the Court *has* defined this language, albeit more broadly than the City favors. Section 34 confers a "broad grant of authority . . . to provide for the welfare of all working persons." *Rocky River IV*, 43 Ohio St. 3d at 13; see also *AAUP*, 87 Ohio St. 3d at 61 (same). The General Assembly can regulate all facets of the employer-employee relationship, including the contractual terms of that relationship.

The City next relies on statements made during the 1912 Constitutional Convention to show Section 34's "limited purpose" of improving working conditions, Akron Br. at 29, but legislative history is beside the point when a provision's language is clear. See R.C. 1.49 ("If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters . . . [t]he legislative history . . ."); *State v. Jordan* (2000), 89 Ohio St. 3d 488, 492 (same). And Section 34's language is "clear and unequivocal," making it unnecessary to "resort to secondary sources, such as the constitutional debates," to determine the meaning of

the provision. *Rocky River IV*, 43 Ohio St. 3d at 15. That language authorizes the General Assembly to legislate for the “general welfare of all employees,” not just for the general welfare of all employees in their workplace. See *City of Dayton v. State* (2d Dist.), 176 Ohio App. 3d 469, 2008-Ohio-2589, ¶ 64 (holding 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’”); *AMFSE Local #74 v. City of Warren*, 2008 Ohio App. Lexis 3298, 2008-Ohio-3905, ¶ 120 (Cannon, J., concurring) (“If this section were intended to apply only to the period of time when one is physically present at work, it could have been simply stated as such by providing for the ‘comfort, health, safety, and general welfare of all employees *during working hours.*”).

Furthermore, even if Section 34’s text were ambiguous and the constitutional debates were thereby relevant, the history of the debates contains statements that support the State’s position. For instance, the City relies on a “moving speech” by Judge Dennis Dwyer to show that Section 34 was adopted to improve conditions in the workplace. See Akron Br. at 29 (quoting D. Dwyer) (“Therefore, give your employees fair living wages, good sanitary surroundings *during hours of labor*, protection as far as possible against danger, a fair working day.”) (alteration omitted). In the same breath, however, Judge Dwyer proclaimed the broad authority of the State to regulate the terms and conditions of employment:

Perhaps some will say that the subject of employment is a matter of contract between employer and the employee with which the government has nothing to do. This is not so. Under its police powers, its sanitary authority, and the right to see that justice is done, *it may regulate employment.*

2 Proceedings and Debates of the Constitutional Convention of the State of Ohio 1333 (1912) (emphasis added). Thus, the debate history supports the State’s interpretation of Section 34, or at the very least does not definitively support either position. And if the latter is the case, then the

ambiguous legislative history cannot and should not trump Section 34's "clear and unequivocal" language.

Finally, the City argues that Section 34 should be interpreted with reference to workers' compensation benefits. Because benefits are awarded to employees only for injuries incurred during the course of employment, Section 34's use of the term "employee" must pertain only to those occasions in which the individual is in the physical workplace or working environment of his employer.

The City's call to import the definition of "employee" from workers' compensation law to Section 34 is unavailing. Section 34 confers broad authority on the General Assembly to enact legislation pertaining to the workplace—tort liability, workers' compensation, occupational safety, and the like. See *Kulch v. Structural Fibers, Inc.*, 78 Ohio St. 3d 134, 152, 1997-Ohio-219 (noting that Section 34 is one of a "host of statutes and constitutional provisions favoring safety in the workplace"). At no point, however, has this Court *limited* Section 34 to that context. On the contrary, the Court has affirmed an assortment of state laws under Section 34 that have no relation to an employee's working environment. See, e.g., *City of Cleveland*, 2007-Ohio-3831 at ¶ 78 (affirming statute granting sick leave to municipal employees); *AAUP*, 87 Ohio St. 3d at 61 (affirming state law mandating ten percent increase in teaching workloads at state universities); *City of Cincinnati*, 61 Ohio St. 3d at 662 (affirming state law specifying certain statutes that would prevail over conflicting provisions in collective bargaining agreements); *Rocky River IV*, 43 Ohio St. 3d at 17-18 (affirming mandatory arbitration procedures between municipalities and safety forces); *State ex rel. Bd. of Trs. of Pension Fund v. Bd. of Trs. of Relief Fund* (1967), 12 Ohio St. 2d 105, 106-07 ("*Pension Fund*") (affirming state law mandating transfer of assets and liabilities from local police and firefighters pension funds to

state police and firefighters pension fund). These cases establish Section 34's broad conferral of authority on the General Assembly to regulate the terms and conditions of the contractual relationship between employers and employees.

At bottom, the City's position rests on the mistaken premise that no connection exists between an employee's residency and his employment. On the contrary, when it adopted local residency as a term and condition of municipal employment, the City created such a connection. Section 34 allows the legislature to prescribe or proscribe various terms and conditions of employment within the state—criminal background, education, physical fitness, certification requirements, and, now under the FRA, residency. See *AAUP*, 87 Ohio St. 3d at 61. As such, the FRA is constitutional, and the Court should reverse the decision below.

3. The Ohio Constitution's preamble in no way limits the General Assembly's authority under Section 34.

As its final argument, the City follows the Ninth District in limiting the scope of the General Assembly's authority under Article II, Section 34 by reference to the preamble of the Ohio Constitution. See *City of Akron*, 2008-Ohio-38 at ¶ 19 (“[T]he Ohio Constitution only authorizes laws that secure freedom for its citizens or further their common welfare . . .”). The Ninth District held that legislation under Section 34 must “address a[] significant social issue[] impacting the public at large,” be “part of a comprehensive legislative scheme,” and “pertain to the protection or regulation of any existing right or obligation of the affected employees.” *Id.* at ¶¶ 24-25. This framework ignores the Constitution's text and canons of interpretation, and it invites an unwarranted incursion into the province of the General Assembly by allowing courts to second guess the need for a specific piece of employment legislation.

As an initial matter, both the City and the Ninth District improperly latch on to the preamble's concept of “common welfare.” See Ohio Const., preamble (“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.”). But the term “common welfare” offers no justiciable standards. Rather, as this Court has stated, “*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.” *Palmer v. Tingle* (1896), 55 Ohio St. 423, 440. Moreover, the broad ideals and aspirations embodied in the preamble cannot limit specific grants of power set out in later constitutional provisions. The text of Section 34 expressly states that “no other provision of the constitution shall impair or limit this power.” That prohibition includes the preamble, and it is fully consistent with the canon of interpretation that the specific shall govern the general. See *Humphrys v. Winous Co.* (1956), 165 Ohio St. 45, 48 (“It is a well settled rule of statutory construction that where a statute couched in general terms conflicts with a specific statute on the same subject, the latter must control.”).

Additionally, no legal authority supports the City’s and the Ninth District’s efforts to impose three limitations on the General Assembly’s Section 34 authority. First, the Ninth District asked whether the challenged legislation “address[ed] any significant social issues impacting the public at large.” *City of Akron*, 2008-Ohio-38 at ¶ 24. But this Court has affirmed the constitutionality of legislation under Section 34 that affected only a small segment of the public. See, e.g., *City of Cleveland*, 2007-Ohio-3831 at ¶ 78 (establishing municipal employees’ right to sick leave); *Pension Fund*, 12 Ohio St. 2d 105, 106-07 (establishing police and firefighters disability and pension fund); see also *AAUP*, 87 Ohio St. 3d at 61 (precluding negligence claims against employer by employees who contract AIDS from a fellow employee) (citing R.C. 3701.249).

Second, the Ninth District asked whether the challenged legislation was “part of a comprehensive legislative scheme,” or whether it “deals with a single issue.” *City of Akron*, 2008-Ohio-38 at ¶ 24. Yet, in *AAUP*, this Court upheld R.C. 3345.45, a single-issue statute mandating an increase in the instructional workload of college professors. In doing so, it observed that the General Assembly could legislate on a case-by-case basis in response to individual concerns: “[T]he state identified a disturbing trend in faculty workload at public universities. As with each of the above statutes, the General Assembly considered this to be a situation where the public interest necessitated legislative intervention.” 87 Ohio St. 3d at 61. Moreover, the Ninth District’s contrary framework—requiring that Section 34 legislation be part of a comprehensive scheme—would create perverse incentives for the General Assembly. When regulating employment issues that affect municipal workers, the legislature would only be able to paint with a broad brush, thereby removing more authority from municipalities.

Third, the Ninth District concluded that Section 34 legislation must “pertain to the protection or regulation of any existing right or obligation of the affected employees,” *City of Akron*, 2008-Ohio-38 at ¶ 25, but nothing in the provision’s text requires the General Assembly to address preexisting rights when legislating for “the general welfare of all employees.” For instance, before the enactment of R.C. 124.38, upheld in *City of Cleveland*, municipal workers did not have a statutory right to sick leave. Before the enactment of the Public Employees’ Collective Bargaining Act, upheld in *Rocky River IV*, municipal employees did not have a statutory right to collective bargaining. Before the enactment of Chapter 742 of the Revised Code, upheld in *Pension Fund*, the police officers and firefighters of this state did not have a statutory right to statewide disability pension funds.

Simply put, the City of Akron fails to recognize the breadth of Section 34. Neither the provision's text nor this Court's decisions support the City's attempt to limit Section 34's reach. The General Assembly may regulate workplace conditions, set qualifications for certain employment positions, and regulate the terms and conditions of the contractual relationship between employers and their employees. On that basis, this Court should affirm the constitutionality of the FRA.

B. The FRA does not unconstitutionally impair the City of Akron's home rule powers.

As this Court has recognized, legislation enacted under Section 34 is immune from a home rule challenge under Article XVIII, Section 3. See *Rocky River IV*, 43 Ohio St. 3d at 13 (citing *Pension Fund*, 12 Ohio St. 2d at 106-07). Because the General Assembly properly enacted the FRA under Section 34, the City's home rule challenge must fail.

Even if the Court were to find that the FRA did not fall within the scope of Section 34, however, the statute still does not offend the home rule provisions of the Ohio Constitution. As explained in the State's briefs in *City of Lima*, and as repeated below, the General Assembly has expressly preempted all conflicting local ordinances with legislation about an issue of statewide concern. See State Merit Br. at 18-23, *City of Lima v. State*, No. 2008-0128 (July 22, 2008).

1. Municipal residency requirements infringe on a matter of statewide concern.

Under the Home Rule Amendment, "[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." Ohio Const., art. XVIII, § 3. Nevertheless, a purported self-government ordinance "must relate 'solely to the government and administration of the internal affairs of the municipality.'" *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, ¶ 11 (emphasis added and citation omitted). After all, "even if there is a matter of local concern involved, if the regulation of the

subject matter 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.” *Cleveland Elec. Illuminating Co. v. City of Painesville* (1968), 15 Ohio St. 2d 125, 129.

The City argues that restricting municipal employment to city residents implicates only the exercise of local self-government. It then cites an assortment of irrelevant cases establishing a municipality’s right to establish *its own procedures* for selecting, removing, and reassigning its public officials and employees. See, e.g., *Bay Vill. Civil Serv. Comm’n*, 28 Ohio St. 3d at 217 (holding that the investigation, appointment, and removal of members of municipal civil commissions were matters for local government); *Canada*, 168 Ohio St. at 191 (holding that city could select its own method of appointment from the civil service eligibility list); *Fitzgerald v. City of Cleveland* (1913), 88 Ohio St. 338, 352 (holding that city could select its own method of nominating candidates for elective office); see also *Harsney v. Allen* (1953), 160 Ohio St. 36, 41 (affirming police chief’s authority to reassign his employees to different duties).

The City’s position is short-sighted. Limiting municipal employment to city residents “is not a matter of merely local concern, but is of statewide concern, and therefore not included within the power of local self-government.” *Am. Fin. Servs. Ass’n v. City of Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, ¶ 29 (internal quotations and citation omitted).

To assess whether an issue is one of “statewide concern,” the Court has looked to whether the issue “has become of such general interest that is necessary to make it subject to statewide control so as to require uniform statewide regulation.” *State ex rel. McElroy v. City of Akron* (1962), 173 Ohio St. 189, 194. In this case, the fact that the matter has received the close attention of the legislature is instructive. See *Am. Fin. Servs. Ass’n*, 2006-Ohio-6403 at ¶ 31

(observing that “[a] statement by the General Assembly of its intent to preempt a field of legislation . . . may be considered to determine whether a matter presents an issue of statewide concern.”). Additionally, as noted by the State in its briefs to the Ninth District, approximately 125 cities and 13 villages across the state now subject their employees to some type of residency restriction. See State Merit Br. at 4, *City of Akron v. State* (9th Dist.), No. 23660 (June 6, 2007).

The “statewide concern” inquiry also looks to the impact of the municipal ordinance on surrounding communities. See *State ex rel. Evans v. Moore* (1982), 69 Ohio St. 2d 88, 90 (“[Municipal regulations which have significant extraterritorial effects are matters of statewide concern.”). A residency restriction “impairs competition among the municipalities for residents; it affects the tax revenue, housing market, and school systems of all surrounding communities.” *AFSCME Local #74, 2008-Ohio-3905* at ¶ 84.

Finally, the FRA was enacted against a backdrop of important statewide policy interests. First, the State has a strong interest in ensuring open and fair access for all Ohioans to public-sector employment opportunities, particularly in a difficult economy. The City’s residency requirements are anti-competitive; they disqualify a number of applicants from municipal positions based on a factor that bears no relationship to their qualifications or performance. Second, the State has an interest in promoting the ability of its citizens and their families to change their residency without fear of adverse employment consequences. See *id.* at ¶ 123 (Cannon, J., concurring) (“[A] residency requirement also affects an employee when a change of circumstances occurs, such as a transfer of their spouse to a location where it is impractical to continue to work in the area or when a child’s special needs cannot be accommodated by the educational services available within the city.”). Third, the increasing number of municipal residency restrictions prompted the General Assembly to enact the FRA. The effect of a

patchwork of residency restrictions on the State of the Ohio, particularly when considered in the aggregate, was a legitimate concern. The State has a vital interest in preventing economic and social isolation between communities.

For these reasons, the ever-increasing number of residency restrictions has become an issue of statewide concern. Regulating those terms and conditions of public-sector employment that have statewide implications is a quintessential component of the “state police power . . . left unimpaired by the adoption of the Home Rule Amendments.” *Am. Fin. Servs. Ass’n*, 2006-Ohio-6403 at ¶ 29 (citation omitted). Accordingly, the City of Akron’s residency restrictions must yield to the FRA.

2. Assuming that the *Canton* test applies, the FRA is a general law that takes precedence over the City of Akron’s residency requirement.

As explained in the State’s *City of Lima* briefs, the four-prong general law test of *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, need not apply here because the powers of local self-government do not allow for blanket residency restrictions in municipal employment. Should this Court conclude that such an analysis is necessary, however, the FRA qualifies as a general law.

Under *Canton*, 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 purporting only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations; and (4) prescribe a rule of conduct upon citizens generally. *Id.* at syllabus.

The City makes a critical mistake when applying this test: It examines the FRA alone. This Court has stated, in no uncertain terms, that “sections within a Chapter will not be considered in isolation when determining whether a general law exists. All sections of a chapter

must be read in *pari materia* to determine whether the statute in question is part of a statewide regulation and whether the chapter *as a whole* prescribes a rule of conduct upon citizens generally.” *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, ¶ 27 (emphasis added). When considered alongside Chapter Nine of the Ohio Revised Code, the FRA satisfies the *Canton* test.

a. The FRA is part of a statewide, comprehensive legislative enactment.

Applying the first prong of *Canton*, the FRA is part of a comprehensive statewide legislative scheme governing the statutory rights, benefits, and duties of public employees. The FRA is codified among other statutes that:

- Provide for the deduction of municipal income tax from the wages of school and public employees (R.C. 9.42);
- Require public employers to count an employee’s prior service with the state or political subdivision in calculating vacation leave (R.C. 9.44, upheld in *State ex rel Evans v. Moore* (1982), 69 Ohio St. 2d 88 and *State ex rel Adkins v. Sobb* (1986), 26 Ohio St. 3d 46);
- Impose a duty on government employees to cooperate with antiterrorism measures (R.C. 9.63); and
- Provide for continuity of benefits for county employees who become municipal employees, and vice versa (R.C. 9.441).

As set forth above, the FRA further complements the existing panoply of employee rights and protections upheld under Article II, Section 34, such as collective bargaining, sick leave, and pension benefits.

b. The FRA operates uniformly throughout the State.

With respect to the second prong of *Canton*, the FRA “applies to all municipalities in the same fashion, subject to the same exceptions. None is singled out or treated differently, and the statute does not operate differently based on different locations in our state.” *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 2008 Ohio Lexis 2539, 2008-Ohio-4605, ¶ 45.

Canton forecloses the City’s argument that the FRA does not operate uniformly because it distinguishes between full-time employees, who are protected from municipal residency restrictions, and part-time employees and volunteers, who are not. “The requirement of uniform operation throughout the state of laws of a general nature does not forbid different treatment of various classes or types of citizens, but does prohibit nonuniform classification if such be arbitrary, unreasonable or capricious.” *City of Canton*, 2002-Ohio-2005 at ¶ 30 (citation omitted). The General Assembly’s distinction between full-time employees and part-time employees was not arbitrary. Such classifications are well-established in state employment statutes, as full-time employees enjoy greater benefits with respect to sick pay, vacation time, health benefits, life insurance, and the like. See *AFSCME Local #74*, 2008-Ohio-3905 at ¶ 102 (“It is axiomatic that full-time permanent employees enjoy more rights, privileges, and protections in law than part-time or temporary employees.”).

c. The FRA qualifies as an exercise of police power that provides for the general welfare of employees.

The third prong of the *Canton* analysis requires that the statute “set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation.” *City of Canton*, 2002-Ohio-2005, at syllabus. At this step, the Court has consistently asked whether the challenged statute furthers a legitimate interest of the State. See *Ohioans for Concealed Carry*, 2008-Ohio-4605 at ¶ 50 (noting that the statute “provides a program to foster proper, legal handgun ownership in this state”); *Am. Fin. Servs. Ass’n*, 2006-Ohio-6043 at ¶ 35 (noting that the statute meets the third prong because it “limits and regulates certain lending practices”); *City of Canton*, 2002-Ohio-2005 at ¶ 33 (noting that the law in question “serve[d] an overriding state interest in providing more affordable housing options across the state”). As discussed above, the FRA furthers the State’s strong interest in ensuring

open and fair access for all Ohioans to public-sector employment opportunities and in promoting free choices by its citizens as to where their families should reside.

Additionally, the FRA is more than a limitation on municipal authority. The statute affirmatively creates a statutory right for municipal employees: “[E]mployees of political subdivisions of this state have the right to reside any place they desire.” R.C. 9.481(C). It then outlines the framework by which a municipality may restrict that right if it decides that quick response times are necessary for certain employees in case of a disaster or emergency. See R.C. 9.481(B)(2)(b) (“[T]he 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.”).

The FRA does not, as the City suggests, devastate the community of Akron. The City recites at considerable length the need for quick responses from its safety forces in emergencies. Akron Br. 3-6. But as just shown, the FRA accounts for that clear need by expressly allowing a municipality to impose limited residency restrictions when quick response times are needed for certain employees. See R.C. 9.481(B)(2)(b). Moreover, the FRA does not prevent a municipality from viewing an applicant’s residency as a favorable characteristic during the hiring process, nor does it preclude it from offering incentives to current employees if they remain inside the community. Rather, the FRA prohibits categorical residency restrictions, which disqualify able-bodied citizens from public-sector positions and prevents current employees from changing residences when their personal or family circumstances so demand.

d. The FRA prescribes a rule of conduct for citizens generally.

With respect to the fourth prong of *Canton*, the FRA establishes a rule of conduct applicable to all municipal employers, current municipal employees, and would-be municipal employees. Employers may not condition employment on residency, and employees may make residency decisions unburdened by fear of adverse employment consequences. Moreover, the FRA is codified in Chapter Nine, which contains a number of provisions governing the duties and responsibilities of political subdivisions and of public employees generally. Once all relevant provisions are identified and examined collectively, it becomes clear that the State has prescribed a general rule of conduct.

This Court's recent opinion in *Ohioans for Concealed Carry* is instructive. The General Assembly had enacted a concealed-carry statute that granted gun-owners a statutory right to "carry a concealed handgun anywhere in this state." R.C. 2923.126(A). The law further restricted municipalities from "attempt[ing] to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed." 2008-Ohio-4605 at ¶ 17 (citation omitted). Shortly after the statute took effect, the City of Clyde enacted a local ordinance restricting handgun owners from carrying their firearms in city parks. *Id.* at ¶ 18. A gun-rights group brought a constitutional challenge, and this Court struck down the ordinance because it conflicted with a general law of the State.

The concealed-carry statute in *Clyde* created a statutory right to carry a concealed handgun, subject to licensing requirements and certain exceptions. It therefore "prescribe[d] a rule of conduct for any citizen seeking to carry a concealed handgun." *Id.* at ¶ 51. In much the same vein, the FRA creates a statutory right to live in the community of one's choice, subject to certain exceptions. It prescribes a rule of conduct—specifically, a term and condition of employment—for any citizen seeking public-sector employment.

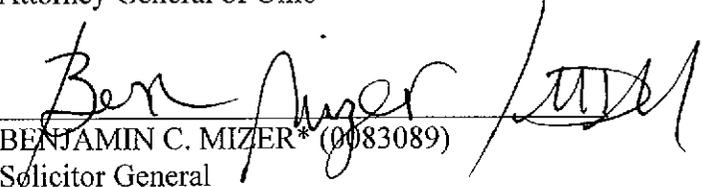
While the Court need not engage in the four-prong general law test of *Canton*, the FRA nevertheless meets each part of that inquiry and constitutes a general law that supersedes the City of Akron's residency requirement.

CONCLUSION

For the reasons set forth above and in the State's Merit Brief, the State of Ohio respectfully asks this Court to reverse the Ninth District and uphold the Freedom of Residency Act as a valid enactment under Article II, Section 34. In the alternative, this Court should uphold the Freedom of Residency Act as a valid statutory enactment on a matter of statewide concern.

Respectfully submitted,

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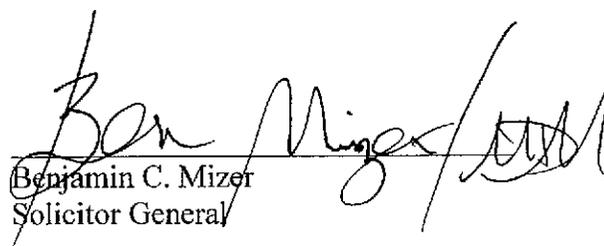
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