

IN THE SUPREME COURT OF OHIO

City of Dayton, Ohio,	:	Case No. 2015-1549
	:	
Plaintiff/Appellant,	:	On Appeal from the
	:	Second District Court of Appeals
v.	:	Montgomery County, Ohio
	:	
State of Ohio,	:	Court of Appeals
	:	Case No. 26643
Defendant/Appellee.	:	
	:	
	:	
	:	

**BRIEF OF AMICUS CURIAE THE OHIO MUNICIPAL LEAGUE, IN SUPPORT OF
PLAINTIFF/APPELLANT CITY OF DAYTON, OHIO**

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INTRODUCTION

THIS CASE INVOLVES MATTERS OF GREAT GENERAL AND PUBLIC INTEREST

The Ohio Municipal League (the “League”), as amicus curiae on behalf of the City of Dayton (the “City” or “Dayton”), urges this Court to reverse the decision of the Second District Court of Appeals (the “Second District”) in *City of Dayton v. State of Ohio*, 36 N.E.3d 235, 2015-Ohio-3160 (2nd Dist.). The Second District erroneously reversed the trial court’s decision, which held that Amended Substitute Senate Bill 342 (“SB 342”) violated the Ohio Constitution, specifically, Article XVIII, Section 3 – the Home Rule Amendment.

The precise issue before this Court is whether the Ohio General Assembly may pass legislation that explicitly restricts municipalities’ authority to enact automatic traffic enforcement programs when such legislation violates the Home Rule Amendment of the Ohio Constitution because it does not “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 does not “prescribe a rule of conduct upon citizens generally.” Accordingly, it is not a “general law” for purposes of home rule analysis.

The legal impact of the issue of automatic traffic enforcement programs involves matters of great general and public interest and extends beyond these programs specifically. If the decision becomes the settled law in Ohio, it would virtually eliminate the Home Rule Amendment of the Ohio Constitution. In other words, the General Assembly would be permitted to control the manner in which municipalities govern their local jurisdictions. The State would be able to restrict municipalities’ governance of local police power, sanitary, and other regulations.

The Second District has set dangerous precedent that could lead to immense disruptions in municipal administration throughout Ohio. This Court has an opportunity to affirm its

previously decisions in *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255 and *Walker v. City of Toledo*, Slip Op. No. 2014-Ohio-5461, ¶¶ 3, 29 (Dec. 18, 2014), that Ohio municipalities have the authority under the Ohio Constitution to impose civil liability on traffic violations through automated traffic enforcement systems, and its decision in *Linndale v. State*, 85 Ohio St.3d 52, 706 N.E.2d 1227 (1999), that the General Assembly cannot limit or restrict municipalities' authority through unconstitutional legislation. The impact of this case is not limited simply to automatic traffic enforcement programs.

This case implicates great general and public interest and for the reasons contained herein, the League urges this Court to reverse the decision of the Second District in *Dayton v. State of Ohio*.

STATEMENT OF AMICUS INTEREST

The Ohio Municipal League is a non-profit Ohio corporation composed of a membership of more than 700 Ohio cities and villages. The Ohio Municipal League and its members have an interest in ensuring the proper application of the Home Rule Amendment to preserve home rule powers of political subdivisions, which includes control of purely local matters, authority over police, sanitary, and other similar regulations, and enforcement of local rules, regulations, and laws. If the Second District's decision stands, not only would municipalities across the State lose the ability to establish automatic traffic enforcement programs, but dangerous precedent would be established permitting the General Assembly to legislatively eliminate municipalities' constitutional home rule powers.

STATEMENT OF THE CASE AND FACTS

The League hereby adopts, in its entirety, and incorporates by reference, the statement of the case and facts contained within the Brief of Appellant City of Dayton, Ohio.

ARGUMENT

In addition to the following arguments, the League incorporates, to the extent applicable, the well-reasoned arguments and authorities contained in the briefs of Appellant City of Dayton.

Proposition of Law No. 1:

SB 342 does not set forth police, sanitary, or similar regulations; rather, it limits legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, in violation of the Home Rule Amendment and established Ohio law.

Section 3, Article XVIII of the Ohio Constitution – the Home Rule Amendment – states that “[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” The Home Rule Amendment gives municipalities the “broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a state-wide nature or interest.” (Citation omitted.) *State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485, ¶ 14, 143 Ohio St. 3d 271, 37 N.E.3d 128.

This Court adopted a three-part test to determine whether a state statute takes precedent over a municipal ordinance. A state statute takes precedence over a local ordinance only when all three parts are met: (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law. *Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 9.

The state statute before this Court in the present matter – SB 342 – fails to meet the third part of the *Canton* test because it is not a general law; therefore, it cannot take precedent over local regulations because its provisions serve only to limit municipalities ability to enforce automatic traffic enforcement programs and it does not prescribe a rule of conduct upon citizens generally.

This Court in *Canton* established a four-part test to determine whether a state statute is a general law for purposes of the Home Rule Amendment. “[I]t must (1) be part of a statewide and comprehensive legislative enactment; (2) apply to all parts of the state alike and operate uniformly throughout the state; (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations; and (4) prescribe a rule of conduct upon citizens generally.”

Canton, at ¶21. SB 342 fails the third and fourth parts of the *Canton* “general law” test.

This Court in *Canton* was clear:

As a rule of law, we held that the words ‘general laws’ as set forth in Section 3 of Article XVIII of the Ohio Constitution means [sic] 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. (Citation omitted.)

Id. at 15. SB 342 sets forth provisions related to automatic traffic enforcement programs that purport only to limit the legislative powers of a municipal corporation to adopt such programs. For example, new section 4511.093(B)(1) of the Ohio Revised Code permit automatic traffic enforcement devices “**only if** a law enforcement officer is present at the location of the device at all times during operation” (Emphasis added.). New section R.C. 4511.095(A) requires municipalities to conduct a three-year traffic study of any intersection or location prior to placing an automatic traffic enforcement device there. The reason for these particular provisions is clear

– the General Assembly seeks to legislatively impede municipalities’ ability to establish and enforcement automatic traffic enforcement programs. The Ohio Legislative Services Commission even foreshadowed this very challenge in its Final Analysis, in which it states “[i]t is unclear if the provisions of the act infringe upon a municipal corporation’s home rule authority under Article XVIII, Section 3 of the Ohio Constitution.” The fact is that SB 342 does, in fact, unconstitutionally infringe on municipalities’ home rule authority.

Indeed, this Court has previously ruled on this issue in the context of local law enforcement regulations. In *Linndale v. State*, 85 Ohio St.3d 52, 706 N.E.2d 1227 (1999), this Court held that municipalities’ authority to regulate traffic comes from the Ohio Constitution, and a state that purports only to limit this constitutionally-granted power is not a general law. *Linndale*, at 55. Just like in *Linndale*, the statute at issue before this Court today – SB 342 – in effect, inhibits municipalities’ ability to enforce local law enforcement regulations. Thus, SB 342 fails the third part of the *Canton* test.

Additionally, SB 342 does not proscribe a rule of conduct upon citizens generally. Instead, it limits municipalities’ constitutional authority and therefore fails the fourth part of the *Canton* test. *See Linndale, supra*.

CONCLUSION

This matter extends well beyond a municipality’s ability to adopt and enforce automatic traffic enforcement programs. If the Second District’s decision stands, it would give the General Assembly authority to legislatively eliminate constitutionally-provided home rule powers.

But, “despite claims to the contrary, constitutional home-rule authority retains its vitality in Ohio.” *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2957, 909 N.E.2d 616. Indeed, this Court has even specifically upheld municipalities’ home rule authority to establish automatic

traffic enforcement programs. *See Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, *see also Walker v. Toledo*, 143 Ohio St. 3d 420, 2014-Ohio-5461, 39 N.E.3d 474.

The General Assembly cannot be permitted to legislatively undermine this Court and virtually eliminate a constitutional provision that was passed by the citizens of this state many years ago.

This case presents a matter of great general and public interest to state and local governments throughout Ohio. For the reasons provided herein, the League respectfully requests this Court to reverse the Second District's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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