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Municipal Minimum Wage Ordinances in Ohio: A Home Rule Analysis

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MUNICIPAL MINIMUM WAGE ORDINANCES IN OHIO: A HOME RULE ANALYSIS

PAUL J. LYSOBEY*

ABSTRACT

In 2016, a grassroots proposal in Cleveland, Ohio sought to raise the minimum wage in the City of Cleveland to fifteen dollars per hour. But before Cleveland residents could vote on the proposal, the Ohio legislature enacted Senate Bill 331, prohibiting Ohio municipalities from setting their own minimum wage rates. However, the Ohio Home Rule Amendment gives municipalities the right to self-governance in certain instances, and there is question as to whether the Ohio legislature's action is a violation of the right to home rule for Ohio cities. This Note evaluates the constitutionality of Senate Bill 331's minimum wage provision and whether the right to home rule in Ohio extends to municipalities setting their own minimum wage rates. This Note concludes that the Ohio legislature does have the authority to restrict the ability of Ohio cities to set their own minimum wage rates when applying the Ohio Supreme Court's current test to evaluate home rule disputes.

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I. INTRODUCTION

There is no doubt it is a struggle to live on a minimum wage job. Many people earning only a minimum wage income cannot afford to pay for basic necessities, such as food, gas, rent, and clothing.¹ Others that are able to live on minimum wage do not have money left over to save for college education or retirement.² Consequently, many people feel it is not possible to support a family on the current minimum wage.³ Because of these realities, there has been an ongoing debate about minimum wage laws throughout the United States.⁴ The point of the debate is to determine what the best solution is when weighing the interest of businesses, the economy, and workers.⁵ Some view the solution to this problem as raising the minimum wage.⁶ However, it is important to examine the proposed method of increasing the minimum wage and its potential consequences.

Imagine you are an aspiring entrepreneur and you want to open a business in a large metropolitan center. There will be many costs associated with this venture, including rent, supplies, licensing fees, payroll expenses, and many more.⁷ Now imagine you are deciding where to open your business and notice that one city requires you to pay your employees eighty-five percent more than nearby cities.⁸ Where would you open your business? The answer is self-evident.

* J.D. expected, Cleveland-Marshall College of Law, May 2019. I wish to extend my gratitude to my parents, Patrick and Margaret Lysobey, and my family, for their support and encouragement. I also wish to thank Professors Kevin F. O'Neill and Margaret Sweeney for their guidance throughout the research and drafting process.

¹ Fred Imbert, *Can 2 Parents, 2 Kids, Live on Minimum Wage? Not Even Close: Report*, NBC NEWS (Aug. 31, 2015), <https://www.nbcnews.com/better/careers/can-2-parents-2-kids-live-minimum-wage-not-even-n418931>.

² *Id.*

³ *Id.*

⁴ Gillian White, *Should Cities Have a Different Minimum Wage Than Their State?*, THE ATLANTIC (Jan. 15, 2015), <https://www.theatlantic.com/business/archive/2015/01/should-cities-have-a-different-minimum-wage-than-their-state/384516/>.

⁵ *Id.*

⁶ *Id.*

⁷ Caron Beesley, *How to Estimate the Cost of Starting a Business from Scratch*, U.S. SMALL BUS. ADMIN. (Sept. 27, 2016), <https://www.sba.gov/blogs/how-estimate-cost-starting-business-scratch>.

⁸ A 2016 proposal in Cleveland sought to raise the minimum wage in the City of Cleveland to \$15.00 per hour, which would have been an 85% increase from the 2016 minimum wage rate of \$8.10 per hour. Leila Atassi, *Ohio Attorney General: Cities Cannot Set Their Own Minimum Wage*, CLEVELAND.COM (July 1, 2016), https://www.cleveland.com/metro/index.ssf/2016/06/ohio_attorney_general_cities_c.html.

In an attempt to provide workers with a more suitable wage, there are municipalities across the country that have tried a solution similar to this hypothetical.⁹ Some cities, such as Seattle, Washington, have raised their minimum wages while the state minimum wage has remained much lower.¹⁰ This has created a patchwork of nonuniform minimum wage laws throughout these states.¹¹ Some groups in Ohio have taken note of this approach to raise the minimum wage at the local level and have started initiatives in Ohio attempting to follow suit.¹² In 2016, supporters of municipal minimum wage increases pushed a proposal to increase the minimum wage in Cleveland.¹³ In an effort to stop the ballot measure to raise the minimum wage in Cleveland, the Ohio General Assembly—influenced by business leaders as well as Cleveland politicians—passed Senate Bill 331, which prohibits cities in Ohio from setting their own unique minimum wage rates.¹⁴

However, the fact that the Ohio legislature passed Senate Bill 331 does not resolve all ambiguity as to whether Ohio cities have the right to set their own minimum wage laws. The Ohio Constitution provides Ohio municipalities the right of “home rule” in certain circumstances.¹⁵ This means that Ohio cities have the authority to tailor their laws to community-specific needs, subject to limitations.¹⁶ While the Ohio Supreme Court has decided many home rule issues, the court has not directly decided the issue of whether Ohio cities’ home rule authority extends to setting their own minimum wage laws.¹⁷ After the passage of Senate Bill 331, some Ohio city officials argued the

⁹ Noam Scheiber, *How a Rising Minimum Wage Affects Jobs in Seattle*, N.Y. TIMES (June 26, 2017), <https://www.nytimes.com/2017/06/26/business/economy/seattle-minimum-wage.html>.

¹⁰ *Id.*

¹¹ *Id.* A minimum wage patchwork occurs when a state legislature dictates one minimum wage rate applicable to the entire state, but specific cities in that state have different minimum wage rates. *See generally* Stephanie Scott, *Should States Preempt Local Governments from Passing Higher Minimum Wage Ordinances?*, U. CIN. L. REV. F. (April 20, 2016), <https://uclawreview.org/2016/04/20/should-states-preempt-local-governments-from-passing-higher-minimum-wage-ordinances/>. This type of system may be undesirable for businesses operating in a particular state because of the complicated nature of complying with different wage rates for each city in the state where they do business. *Id.* A patchwork system of minimum wage laws may be especially burdensome if there is a large disparity between the state law wage rate and the specific municipal rates. *Id.*

¹² Atassi, *supra* note 8.

¹³ *Id.*

¹⁴ Kris Maher, *Ohio Lawmakers Pass Bill Forbidding Cities from Raising Minimum Wage*, WALL ST. J. (Dec. 8, 2016), <https://www.wsj.com/articles/ohio-lawmakers-pass-bill-forbidding-cities-from-raising-minimum-wage-1481224986>.

¹⁵ Philip Hartman, *Ohio’s Constitution Gives Municipalities “Home Rule” Self-Governance Authority*, OHIO ST. BAR ASS’N (Dec. 20, 2016), <https://www.ohiobar.org/ForPublic/Resources/LawYouCanUse/Pages/Ohio's-Constitution-Gives-Municipalities-Home-Rule-Self-Government-Authority.aspx>.

¹⁶ *Id.*

¹⁷ Atassi, *supra* note 8.

bill violated the Ohio Constitution, alleging it infringes on home rule authority.¹⁸ Besides the minimum wage provision in Senate Bill 331, there were many other home rule issues inserted in the law.¹⁹ Accordingly, some Ohio cities and community advocacy groups took issue with Senate Bill 331 and have challenged the law as infringing on home rule rights.²⁰ Consequently, because of pending litigation, and the fact that raising the minimum wage is a hot-button topic across the country, it is important to examine how this issue would play out in court. Therefore, it is necessary to examine this issue from the perspective of the Ohio Supreme Court to determine how the court may rule on the issue of whether Ohio home rule authority permits municipalities to set their own minimum wage laws.

This Note will argue that it is outside the scope of home rule authority for Ohio cities to enact their own minimum wage laws. Part II of this Note will provide background on home rule in Ohio and the test the Ohio Supreme Court uses to evaluate home rule disputes. Part II will also provide background on municipal minimum wage laws throughout the country and the recent ballot proposal to raise the minimum wage in Cleveland. Part III provides an analysis of how the Ohio Supreme Court may analyze and potentially rule on the question of whether municipalities in Ohio have the home rule authority to set their own minimum wage laws. Part IV will serve as a conclusion to this Note.

II. BACKGROUND

A. Home Rule Inception in Ohio

At the outset of the 20th century, there were calls from many Ohio residents to reform the Ohio Constitution.²¹ Progressive-minded Ohioans sought reforms in relation to many different aspects of life, including allowing city governments more power to govern their respective cities.²² Civic leaders in larger cities, such as Cleveland, Toledo, and Columbus desired reforms to free their cities from having to rely on the state legislature.²³ State laws had often impeded the efforts of city leaders to implement reforms and municipal leaders wanted more control over local affairs.²⁴ Discussions to reform the Ohio Constitution ultimately culminated in the Ohio Constitutional Convention of 1912.²⁵ Before the 1912 convention, Ohio cities were able to exercise only the powers that the state legislature had expressly granted to

¹⁸ See *id.*; see also Hartman, *supra* note 15 (explaining home rule authority).

¹⁹ S.B. 331, 131st Gen. Assemb., Reg. Sess. (Ohio 2016).

²⁰ Atassi, *supra* note 8.

²¹ STEVEN H. STEINGLASS & GINO J. SCARSELLI, *THE OHIO STATE CONSTITUTION: A REFERENCE GUIDE* 34 (2004).

²² Landon Warner, *Ohio's Constitutional Convention of 1912*, 61 OHIO ST. ARCHAEOLOGICAL & HIST. Q. 11, 13 (1952).

²³ *Id.* at 14.

²⁴ STEINGLASS & SCARSELLI, *supra* note 21, at 46.

²⁵ *Id.* at 44.

cities.²⁶ Thus, city leaders were eager to have more power allotted to municipalities.²⁷ During the 1912 convention, delegates debated many potential amendments to the Ohio Constitution. Delegates ultimately recommended a total of forty-two total amendments to be ratified, including the home rule amendment.²⁸ Ratification of these recommended amendments required a majority vote of Ohio voters.²⁹ Conservative groups were wary of the many proposals, but progressive newspapers, such as the Cleveland Plain Dealer, advised Ohio residents to vote “yes” on the recommended amendments.³⁰ Of the forty-two proposals recommended to voters, thirty-four of the proposed amendments passed.³¹ The home rule proposal passed with fifty-eight percent of the vote.³² The home rule amendment was thus adopted as Article XVIII of the Ohio Constitution.³³

Article XVIII, Section 3 of the Ohio Constitution addresses municipal powers of self-governance and the relationship between state and local power.³⁴ Article XVIII, Section 3 provides as follows: “Municipalities shall have the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.”³⁵ The home rule amendment therefore provided municipalities the constitutional authority to determine their governmental structures, to exercise local power of government over city affairs without approval from the Ohio legislature, and to operate and control public utilities.³⁶

While the home rule amendment was adopted to give municipalities more authority to govern themselves, the state retained exclusive power in areas “where a municipality would in no way be affected or where state dominance seemed to be required.”³⁷ The goal of proposing the home rule amendment was to allow municipalities to determine their type of governance structures, to control and operate

²⁶ *Id.* at 46.

²⁷ *Id.*

²⁸ *Id.* at 49.

²⁹ *Id.* at 46.

³⁰ *Id.* at 50.

³¹ *Id.* at 45.

³² *Id.* at 358. Other proposed amendments that passed included proposals related to requiring mandatory worker’s compensation and allowing the Ohio legislature more power to regulate the Ohio coal mining and banking industries. Warner, *supra* note 22, at 17. The eight proposed amendments that were ultimately rejected included a proposal that would have given women the right to vote in Ohio, which would have made Ohio the first state east of the Mississippi River to allow women the right to vote. STEINGLASS & SCARSELLI, *supra* note 21, at 50. Other failed proposals would have ended the death penalty in Ohio and would have altered the jury system in civil cases to allow a three-fourths verdict instead of a unanimous verdict. *Id.*

³³ OHIO CONST. art. XVIII, § 3.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*; STEINGLASS & SCARSELLI, *supra* note 21, at 46–47.

³⁷ GEORGE D. VAUBEL, MUNICIPAL HOME RULE IN OHIO 1107–08 (1978).

public utilities, and to exercise local powers of government that did not conflict with state laws.³⁸ Therefore, the intent of the home rule amendment was not to give municipalities unlimited power to pass laws to govern every aspect of life in cities, but rather to have the authority to control purely local affairs.³⁹

To determine the scope of the home rule authority extended to municipalities through Article XVIII, Section 3, it is important to examine how the Ohio Supreme Court has applied the text of the home rule amendment. When a municipality passes a law that may exceed the scope of home rule authority—or when the state enacts legislation that seems to conflict with a municipal ordinance—Ohio courts must make a home rule determination of which law should stand.⁴⁰ To make this determination, the Ohio Supreme Court has developed a test to evaluate home rule issues.⁴¹

B. Ohio's Home Rule Test

The Ohio Supreme Court articulated its current test to determine whether a municipality exceeds its home rule authority in *City of Canton v. State*.⁴² The court slightly modified this test in *Mendenhall v. Akron*.⁴³ According to the home rule test, a municipality exceeds its home rule powers when “(1) the ordinance is an exercise of police power, rather than of local self-government, (2) the state statute is a general law, and (3) the municipal ordinance is in conflict with the state law.”⁴⁴ All three of these prongs must be satisfied for the state statute to supersede the local ordinance.⁴⁵ Because the Ohio Supreme Court first established this test in *City of Canton v. State*, courts and commentators refer to this test as the “*Canton*” test.⁴⁶

When examining the first part of the *Canton* test—“whether the matter in question involves an exercise of local self-government or an exercise of police power”—courts ask whether the ordinance “affects only the municipality itself, with no extraterritorial effects.”⁴⁷ If the ordinance affects only the municipality, then the

³⁸ STEINGLASS & SCARSELLI, *supra* note 21, at 46–47.

³⁹ *Id.*

⁴⁰ See *City of Canton v. State*, 766 N.E.2d 963, 964 (Ohio 2002). Since the inception of the home rule amendment in 1912, the Ohio Supreme Court has considered over one hundred situations to determine whether an enactment from the Ohio legislature overrides a municipal ordinance. *City of Dayton v. State*, 87 N.E.3d 176, 191 (Ohio 2017).

⁴¹ *Canton*, 766 N.E.2d at 968.

⁴² *Id.*

⁴³ *Mendenhall v. City of Akron*, 881 N.E.2d 255, 260 (Ohio 2008). The *Mendenhall* court modified the order of the home rule test articulated in *Canton*, without changing any substantive elements. *Id.* The *Canton* court had previously ordered the home rule test to first ask whether a conflict existed between the municipal ordinance and the state statute. *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See, e.g., *Mendenhall*, 881 N.E.2d at 260; *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 896 N.E.2d 967, 972 (Ohio 2008); *Am. Fin. Servs. Ass'n v. City of Cleveland*, 858 N.E.2d 776, 782 (Ohio 2006).

⁴⁷ See *Am. Fin. Servs.*, 858 N.E.2d at 787; *City of Rocky River v. Ohio Emp't Relations Bd.*, 530 N.E.2d 1, 5 (Ohio 1988).

ordinance is within the local government's power, and therefore the ordinance would not exceed the city's home rule power.⁴⁸ Consequently, if the city ordinance relates only to self-governance, the analysis stops, because the city's power in that realm is absolute.⁴⁹ However, if the court finds the municipal ordinance does not relate solely to self-government, the analysis moves to the second part of the *Canton* test.⁵⁰

The second part of the *Canton* home rule test is "whether the state statute is a general law."⁵¹ To qualify as a general law, the Ohio Supreme Court has enacted a four-part test.⁵² A state statute must meet all four prongs of the test to be classified as a general law.⁵³ The first two prongs of the test require the state statute to "(1) be part of a statewide and comprehensive legislative enactment and (2) to apply to all parts of the state alike and operate uniformly throughout the state" to qualify as a general law.⁵⁴ Steps three and four examine if the statute "(3) sets 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) prescribes a rule of conduct upon citizens generally."⁵⁵

The last step of the *Canton* test is to determine if the municipal ordinance and the state law conflict with each other.⁵⁶ To determine if a conflict exists, the Ohio Supreme Court has adopted the "contrary directives" test.⁵⁷ The contrary directives test says a conflict exists if "the ordinance permits or licenses that which the statute forbids, and vice versa."⁵⁸

⁴⁸ *Rocky River*, 530 N.E.2d at 5.

⁴⁹ *Id.*

⁵⁰ *Ohioans for Concealed Carry*, 896 N.E.2d at 971.

⁵¹ *Mendenhall*, 881 N.E.2d at 260. In many home rule disputes, the outcome hinges on whether the state statute qualifies as a general law. Before the Supreme Court of Ohio articulated its current home rule test in *City of Canton v. State* in 2002, the court applied inconsistent tests to determine what constitutes a general law in home rule situations. *See City of Canton v. State*, 766 N.E.2d 963, 966–68 (Ohio 2002). Years of confusing and inconsistent jurisprudence lead the *Canton* court to combine decades of case law in an attempt to make a logical and consistent test to decide home rule disputes. *See City of Dayton v. State*, 87 N.E.3d 176, 191 (Ohio 2017). Much of the confusion and inconsistency dealt with the question of what constitutes a general law. *Id.* at 191. Some commentators, and even some members of the Ohio Supreme Court believe that the court should again rework its current test. Justice DeWine noted in a recent opinion, that the Ohio Supreme Court has deviated from the original understanding of what a "general law" was when the home rule amendment was ratified. *Id.* at 191–92. Justice DeWine argues that the *Canton* general law test should be abandoned and a test more accurately reflecting what "general law" would have meant in the eyes those who ratified the home rule amendment should be adopted. *Id.* at 197.

⁵² *Mendenhall*, 881 N.E.2d at 261.

⁵³ *Am. Fin. Servs. Ass'n v. City of Cleveland*, 858 N.E.2d 776, 783 (Ohio 2006).

⁵⁴ *Mendenhall*, 881 N.E.2d at 261.

⁵⁵ *Id.*

⁵⁶ *Id.* at 262.

⁵⁷ *Id.* at 262–63.

⁵⁸ *Struthers v. Sokol*, 140 N.E.2d 519, 519 (Ohio 1923).

Since the inception of the *Canton* test in 2002, the Ohio Supreme Court has applied this test to determine that municipalities do have the home rule authority to regulate tow trucks,⁵⁹ automated traffic cameras,⁶⁰ and the location of manufactured homes.⁶¹ However, the Ohio Supreme Court has held municipalities do not have the authority to regulate guns,⁶² predatory lending,⁶³ or to impose residency restrictions for public employees.⁶⁴

C. Municipal Minimum Wage Ordinances

Over the past several years, there has been a growing trend in cities across the country to increase the minimum wage for workers at the city level.⁶⁵ These efforts have appeared as grass-roots efforts in cities where residents feel the state-required minimum wage does not correlate to the cost of living in a large metropolitan area.⁶⁶ In 2014, the Seattle City Council passed one of the most notable city-wide minimum wage increases.⁶⁷ The Seattle ordinance provided for a \$15 minimum wage in the city to be phased in over several years.⁶⁸ While Seattle was not the first city to raise its

⁵⁹ *City of Cleveland v. State*, 5 N.E.3d 644, 651 (Ohio 2014).

⁶⁰ *Mendenhall*, 881 N.E.2d at 265.

⁶¹ *City of Canton v. State*, 766 N.E.2d 963, 970 (Ohio 2002).

⁶² *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 896 N.E.2d 967, 974 (Ohio 2008).

⁶³ *Am. Fin. Servs. Ass'n v. City of Cleveland*, 858 N.E.2d 776, 785–86 (Ohio 2006).

⁶⁴ *City of Lima v. State*, 909 N.E.2d 616, 621 (Ohio 2009).

⁶⁵ See Yuki Noguchi, *As Cities Raise Minimum Wages, Many States Are Rolling Them Back*, NPR (July 18, 2017), <http://www.npr.org/2017/07/18/537901833/as-cities-raise-minimum-wages-many-states-are-rolling-them-back>.

⁶⁶ Fred Imbert, *Cost of Living Is Increasingly out of Reach for Low-Wage Workers*, CNBC (Aug. 31, 2015), <https://www.cnbc.com/2015/08/31/cost-of-living-is-increasingly-out-of-reach-for-low-wage-workers.html>. The minimum wage issue may be addressed at the federal, state, or local level. As of January 2019, the federal minimum wage was \$7.25 per hour. *Consolidated State Minimum Wage Table*, U.S. DEPT. OF LABOR (Jan. 1, 2019), <https://www.dol.gov/whd/minwage/mw-consolidated.htm>. The federal minimum wage has not changed since 2009. *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938–2009*, U.S. DEPT. OF LABOR (Aug. 22, 2018), <https://www.dol.gov/whd/minwage/chart.htm>. The entire state of Ohio has its own minimum wage, which is tied to the rate of inflation. *2018 Brings Higher Minimum Wage in Ohio*, WKYC (Aug. 22, 2018), <https://www.wkyc.com/article/money/2018-brings-higher-minimum-wage-in-ohio/95-502631590>. Ohio's minimum wage rate is \$8.55 per hour, as of January 2019. *Consolidated State Minimum Wage Table*, *supra* note 66. Besides Ohio, as of January 1, 2019, 28 other states plus D.C. had a required minimum wage rate greater than the federal rate. In states where the state rate is greater than the federal rate, the state wage rate prevails. *Id.* The federal minimum wage rate therefore acts as a minimum wage floor. The recent trend to set minimum wage rates at the city level has arisen because the federal government and state governments tend to operate slowly, resulting in a willingness in larger cities to enact city-specific minimum wage laws. *Id.*

⁶⁷ Taylor Malmshemer, *The Future of Minimum Wage Will Be Decided in Cities*, NEW REPUBLIC (Aug. 1, 2014), <https://newrepublic.com/article/118912/city-specific-minimum-wage-policies-are-increasing>.

⁶⁸ *Id.*

minimum wage compared to the state minimum wage, the Seattle wage increase intrigued residents in other large metropolitan centers.⁶⁹ Naturally, many residents in large cities wanted to follow Seattle's \$15 per hour minimum wage model.⁷⁰ Because the Seattle minimum wage increase occurred recently, it is difficult to determine the full extent of the effects of the increase. However, a few recent studies shed some light on the effects of the Seattle wage increase up to this point. In June 2017, two studies were released addressing the effects of the first phase of the Seattle minimum wage increase.⁷¹ One study, conducted by the University of California, Berkeley, found that Seattle's minimum wage increase has resulted in a minimal reduction in unemployment.⁷² However, another study conducted by the University of Washington, found that the Seattle wage increase has resulted in a nine percent decrease in the number of hours worked by low-wage workers.⁷³ Because the minimum wage experiment in Seattle is only in its infancy, research is ongoing to determine the full effects of the Seattle law. But regardless of the effects of minimum wage laws on a particular city, states with patchwork systems of minimum wage laws are shown to foster a more detrimental business environment.⁷⁴

However, notwithstanding the complicated nature and potentially damaging consequences of increasing minimum wage rates at the city level, many communities across the United States have become intrigued by the idea of raising the minimum wage at the local level and bypassing state and federal bureaucracy.⁷⁵

D. Cleveland's Minimum Wage Increase Proposal

Following the trend begun in other states to raise minimum wage rates at the city level, the push for a minimum wage increase recently found its way to Ohio.⁷⁶ In 2016,

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Scheiber, *supra* note 9.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Aside from the state of Washington, California is another state with a complicated system of patchwork minimum wage laws that may be confusing or expensive for businesses to understand and comply with. Annemaria Duran, *California Minimum Wage Across Cities and Towns 2018 Guide for Employers*, SWIPECLOCK (Dec. 1, 2017), <https://www3.swipeclock.com/blog/california-minimum-wage-across-cities-towns-2018-guide-employers/>. Many California cities have passed minimum wage laws exceeding the state-dictated minimum wage rate. Lisa Nagele-Piazza, *California Employers Face Patchwork of New Minimum Wages in 2018*, SHRM (Dec. 7, 2017), <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/california-new-minimum-wage-2018.aspx>. In total, there are thirty cities in California that have a minimum wage rate greater than the California state-dictated rate of \$10.50 per hour. *Id.* Businesses operating in California therefore have the burden of complying with the law of every city in which they do business. This has shown to be complex, costly, and burdensome for some California businesses. There is no indication from the California state legislature that it will attempt to pass legislation outlawing city-specific minimum wage ordinances. *Id.*

⁷⁵ See White, *supra* note 4.

⁷⁶ Maher, *supra* note 14.

the group Raise Up Cleveland attempted to put an issue on the ballot for Cleveland voters to decide whether to raise the minimum wage in Cleveland.⁷⁷ The ballot issue sought to raise the minimum wage in Cleveland to \$12 by 2018 and to \$15 by 2021.⁷⁸ This proposal gained the support of many Cleveland residents, many of whom were paid the 2016 state-dictated rate of \$8.10 per hour.⁷⁹ One study showed that seventy-seven percent of Cleveland voters favored increasing the minimum wage to \$15 per hour in the city.⁸⁰ Cleveland residents supportive of the proposal saw this as a positive step forward for a city where a large number of residents live on a minimum wage income and below the poverty line.⁸¹

While seemingly a majority of Cleveland residents were supportive of the ballot initiative, city leaders took the opposite stance.⁸² The mayor, city council, and business leaders believed the measure would instantly make Cleveland a less competitive place to do business.⁸³ If Cleveland solely had a \$15 minimum wage, the minimum wage rate would be almost double the rate of the rest of the state.⁸⁴ Those opposed to the increase believed that this would lead to a loss of jobs in Cleveland, because employers would flee to outside suburbs to avoid the extra employment cost.⁸⁵ A May 2016 study backed up many of the concerns of those skeptical of the minimum wage proposal.⁸⁶ The study found that approximately 32,500 employees in the City of Cleveland would be affected by a minimum wage increase.⁸⁷ This study also determined that at a rate

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Leila Atassi, *Special Election for Phased-In \$15 Minimum Wage Proposal Set for May 2 in Cleveland*, CLEVELAND.COM (Sept. 13, 2016), https://www.cleveland.com/metro/index.ssf/2016/09/special_election_for_phased-in_1.html.

⁸⁰ Tom Beres, *\$15-an-Hour Minimum Wage Proposal to Go Before Cleveland City Council*, WKYC (May 11, 2016), <http://www.wkyc.com/article/news/local/cleveland/15-an-hour-minimum-wage-proposal-to-go-before-cleveland-city-council/95-185466289>.

⁸¹ Atassi, *supra* note 79.

⁸² *Id.*

⁸³ Sante Ghetti, *Cleveland Council Rejects Minimum Wage Hike, Voters May Still Decide*, COSE (Aug. 16, 2016), <https://www.cose.org/Mind%20Your%20Business/Business%20Growth/Cleveland%20Council%20rejects%20minimum%20wage%20hike%20voters%20may%20still%20decide.aspx>.

⁸⁴ *Id.*

⁸⁵ Tom Beres, *Key Labor Leaders Speak Out Against Cleveland Minimum Wage Hike*, WKYC (June 6, 2016), <http://www.wkyc.com/news/local/cleveland/key-labor-leaders-speak-out-against-15hr-cle-only-minimum-wage-plan/234462068>. Other concerns included the fear that a \$15 minimum wage would put Cleveland out of the mainstream economy of the rest of northeast Ohio and the state in general. *Id.*

⁸⁶ John Barker, *Cleveland's Minimum-Wage Hike's Unintended Consequences*, CLEVELAND.COM (May 20, 2016), https://www.cleveland.com/opinion/index.ssf/2016/05/unintended_consequences_of_cle.html. The authors of the study used the same methodology developed by the Congressional Budget Office (CBO) to evaluate the potential effects of a federal minimum wage increase proposed by President Obama.

⁸⁷ *Id.*

of \$15 per hour in Cleveland, 2,500 jobs would be lost in the city due to either businesses leaving or businesses laying off workers to save on wage costs.⁸⁸

Even though virtually all of the city government officials were opposed to the minimum wage increase, city officials did not have the final say on whether the minimum wage proposal would become law in Cleveland.⁸⁹ Although Cleveland City Council voted down proposals to put the minimum wage issue on the ballot, proponents of the minimum wage increase invoked a provision of the Cleveland City Charter that forced the City Council to put the issue up to a vote by Cleveland residents.⁹⁰ After gaining enough signatures to compel the City Council to place the issue on the ballot, a special election was scheduled for May 2, 2017 for Cleveland residents to vote on the minimum wage increase proposal.⁹¹

With Cleveland residents set to vote on the proposal, Cleveland business and civic leaders petitioned the Ohio legislature to pass a law that would explicitly forbid municipalities from setting their own minimum wage laws.⁹² The Ohio legislature granted the request.⁹³ In December 2016, before Cleveland residents were able to vote

⁸⁸ *Id.*

⁸⁹ Ghetti, *supra* note 83. Cleveland City Council voted down the minimum wage proposal by a vote of 16 to 1. *Id.* The only council member to vote in favor of the proposal was Jeffrey Johnson. Atassi, *supra* note 79.

⁹⁰ Ghetti, *supra* note 83.

⁹¹ 11,900 Cleveland residents signed petitions in support of putting the minimum wage issue on the ballot in Cleveland. Only 5,000 signatures were required. Beres, *supra* note 80.

⁹² Beres, *supra* note 85. It is interesting to note that in this instance, municipal city leaders were asking the state legislature to restrict municipal home rule rights. Usually home rule disputes occur when the state passes a statute, and then a municipality challenges that statute as an exercise of home rule authority. *See, e.g., City of Canton v. State*, 766 N.E.2d 963, 965 (Ohio 2002). However, the idea for a \$15 minimum wage in Cleveland did not originate in Cleveland City Council, but rather as a grassroots effort supported by local advocacy groups, including Raise Up Cleveland. *See* Beres, *supra* note 85. Although city leaders were opposed to a \$15 minimum wage targeted directly at the City of Cleveland, city leaders, such as mayor Frank Jackson, stated they would support a statewide minimum wage increase. *Clevelanders Against Job Loss, DOWNTOWN CLEV. ALL.* (July 29, 2016), http://www.downtowncleveland.com/DCA/media/DCA_Media/News/2016%20News/07-29-16_-CleMinWageTwo-Pager.pdf. City officials believed that if the minimum wage was only raised in Cleveland, it would prove problematic for attracting and retaining business in the city. However, city leaders were not necessarily opposed to a general statewide minimum wage increase that would raise the minimum wage rate for the entire state of Ohio. *Id.*; *see also* Ghetti, *supra* note 83.

⁹³ Maher, *supra* note 14. Although the Ohio legislature passed Senate Bill 331 with the express intent to preempt the potential ballot issue in Cleveland to raise the minimum wage in the city, or any other similar minimum wage proposals, the mere fact that the legislature intended to preempt potential local ordinances is not dispositive. *See, e.g., Ohioans for Concealed Carry, Inc. v. Clyde*, 896 N.E.2d 967, 972 (Ohio 2008) (holding that just because the Ohio legislature expressly intends to preempt a city ordinance, the city ordinance may still be lawful as an exercise of the city's home rule power). Because municipalities have constitutional authority pursuant to the home rule amendment to pass certain kinds of laws, the Ohio legislature cannot trump the constitutional authority of municipalities to enact legislation as long as the municipal legislation is otherwise in accordance with the home rule amendment. *Id.*

on this minimum wage proposal, the Ohio legislature passed Senate Bill 331.⁹⁴ The passage of this bill stopped the Cleveland ballot proposal because it prohibited Ohio municipalities from raising their minimum wage rates above the state minimum wage rate.⁹⁵

In anticipation of potential ballot initiatives to raise the minimum wage in Ohio cities, some wondered if home rule authority extended to cities setting their own minimum wage laws.⁹⁶ Mike DeWine, the Ohio Attorney General, released an opinion letter in June 2016 to address this question.⁹⁷ DeWine's analysis examined the three parts of the *Canton* test and concluded that setting a minimum wage is not within home rule authority for Ohio municipalities.⁹⁸ The analysis completed in this Note will have the same outcome but will offer a more relevant and current take on the issue. Because DeWine issued the opinion letter in June 2016 and the Ohio legislature did not enact Senate Bill 331 until December 2016, he did not include Senate Bill 331 in his analysis.⁹⁹ Moreover, DeWine's analysis is not an authoritative statement of law, and a court may overrule his opinion letter.¹⁰⁰ The opinion letter also lacks analysis in certain areas of the home rule test application and does not address potential counter arguments.¹⁰¹ Therefore, it is necessary to examine this issue with a fresh set of eyes to determine how an Ohio court would decide a potential challenge to Senate Bill 331 on home rule grounds.

III. ANALYSIS

When addressing the issue of whether Ohio municipalities have home rule authority to determine their own unique minimum wage laws, the Ohio Supreme Court will apply the *Canton* test. Accordingly, the court will ask "(1) whether the ordinance is an exercise of police power, rather than of local self-government, (2) whether the

⁹⁴ S.B. 331, 131st Gen. Assemb., Reg. Sess. (Ohio 2016). Ohio was not the first state to pass a state law preempting municipalities from setting their own minimum wage ordinances. As of July 2017, twenty-five states have passed laws forbidding municipalities from setting local minimum wage rates. Among these states include the neighboring states of Michigan, Indiana, Kentucky, and Pennsylvania. *Fighting Preemption: The Movement for Higher Wages Must Oppose State Efforts to Block Local Minimum Wage Laws*, NAT'L EMP. L. PROJECT (July 6, 2017), <http://www.nelp.org/publication/fighting-preemption-local-minimum-wage-laws/>.

⁹⁵ See Ohio S.B. 331. On January 12, 2017, Raise Up Cleveland announced it would suspend the ballot measure to raise the minimum wage to \$15 in Cleveland due to the passage of Senate Bill 331. Ghetti, *supra* note 83. The group stated that it will continue to advocate a minimum wage increase at the statewide level. *Id.*

⁹⁶ Ohio Att'y Gen. Op. No. 2016-021 (June 30, 2016).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See Ohio S.B. 331.

¹⁰⁰ See *Overruled Opinions*, OHIO ATT'Y GEN., <http://www.ohioattorneygeneral.gov/About-AG/Service-Divisions/Opinions/Overruled-Opinions> (listing past attorney general opinions later reversed by the Ohio Supreme Court).

¹⁰¹ See generally Ohio Att'y Gen. Op. No. 2016-021 (June 30, 2016).

state statute is a general law, and (3) whether the municipal ordinance is in conflict with the statute.”¹⁰²

For purposes of this analysis, the state statute in question is the provision in Senate Bill 331 that amended Ohio Revised Code Section 4111.02.¹⁰³ This provision states, “No political subdivision shall establish a minimum wage rate different from the wage rate required under this section.”¹⁰⁴ The municipal ordinance at issue will be the proposed ballot initiative in Cleveland, that sought to raise the minimum wage in Cleveland to \$12 per hour by 2018 and then to \$15 by 2021.¹⁰⁵

A. Municipal Exercise of Power

The first part of the *Canton* test—“whether the ordinance is an exercise of police power, rather than of local self-government”—is the threshold question in any home rule analysis.¹⁰⁶ This part of the *Canton* test looks solely at the characteristics of the municipal ordinance.¹⁰⁷ If a court determines the city ordinance to be an exercise of the power of local self-government, then the analysis ends.¹⁰⁸ This is because the Ohio Supreme Court has held that the Ohio Constitution affords municipalities the absolute power to exercise local self-government within its territorial limits.¹⁰⁹ On the other hand, if the ordinance protects the “health, safety, or general welfare of the public,”

¹⁰² *Mendenhall v. City of Akron*, 881 N.E.2d 255, 260 (Ohio 2008).

¹⁰³ See Ohio S.B. 331, 131st Gen. Assemb., Reg. Sess. (Ohio 2016); OHIO REV. CODE ANN. § 4111.02 (2017). Aside from the minimum wage proposal, Senate Bill 331 included other different and unrelated provisions, including the regulation of pet stores and dog retailers, restrictions on how municipalities may regulate terms and conditions of work, and the how Ohio cities may regulate micro wireless facilities. See Ohio S.B. 331. Multiple Ohio cities opposed some aspect of the law and challenged the law as a violation of an Ohio constitutional prohibition against including multiple subjects in a single bill. Brian Grosh, *Ohio Cities Oppose Wireless Equipment Law*, COURTHOUSE NEWS SERV. (March 21, 2017), <https://www.courthousenews.com/ohio-cities-team-fight-wireless-equipment-law/>. In June 2017, a Franklin County, Ohio trial court invalidated Senate Bill 331 as a violation of the single-subject rule. *City of Bexley v. State*, 92 N.E.3d 397, 407 (Ohio Ct. Com. Pl. 2017). However, a home rule assessment of the constitutionality of the minimum wage provision is relevant even in the wake of this ruling. Because state leaders plan to appeal the ruling, it is possible Senate Bill 331 may be upheld on appeal, leaving the entire law and the minimum wage provision in place. Andrew King, *State Plans to Appeal SB 331 Ruling*, THIS WEEK NEWS (June 17, 2017), <http://www.thisweeknews.com/news/20170619/state-plans-to-appeal-sb-331-ruling>. Moreover, even if the ruling is affirmed on appeal, because Senate Bill 331 was not invalidated on home rule grounds, the Ohio legislature could pass standalone legislation again prohibiting municipalities from setting their own minimum wage rates. Consequently, it is still likely that a home rule challenge to a required statewide minimum wage rate will make its way through Ohio courts in the future.

¹⁰⁴ OHIO REV. CODE ANN. § 4111.02 (2017). The wage rate “required under this section” is \$8.55 per hour, as of January 1, 2019. *Consolidated State Minimum Wage Table*, *supra* note 66.

¹⁰⁵ Maher, *supra* note 14.

¹⁰⁶ *Mendenhall*, 881 N.E.2d at 260.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

the ordinance is classified as a police power.¹¹⁰ A state statute will supersede a municipal ordinance classified as an exercise of the municipality's police power.¹¹¹ Therefore, the first issue in this analysis is to determine if the activity of municipalities creating their own minimum wage laws is an exercise of local government or a police power.¹¹²

1. Statewide Concern Doctrine

One way the Ohio Supreme Court examines whether a municipal ordinance is an exercise of local government is to apply the "statewide concern doctrine."¹¹³ The statewide concern doctrine states that when a city exercises its powers of local government, the city cannot "infringe on matters of a general and statewide concern."¹¹⁴ If a matter is a statewide concern, then a municipality may not regulate that issue because it would infringe on the rights of other municipalities, as well as the Ohio legislature's role in governance of the state. A matter is an issue of general and statewide concern if the matter "affects the general public of the state as a whole more than the local inhabitants" or if the matter significantly affects other parts of the state.¹¹⁵

Proponents of the rights of municipalities to set their own minimum wage laws argue that an increase of a minimum wage rate in one city does not affect—or has only a minimal effect on—surrounding communities.¹¹⁶ However, research shows that allowing cities to set their own minimum wages results in an increase in unemployment and would drive businesses to cities where they could pay a lower wage expense.¹¹⁷ Passing the increase would therefore create an influx of businesses to cities surrounding Cleveland.¹¹⁸ Whether the influx would be beneficial to surrounding cities is irrelevant. The important point is that a municipality that raises its minimum wage rate above the state-specified rate would influence the economies of surrounding communities.¹¹⁹

Businesses considering coming to Ohio may also be deterred by a "patchwork" system of minimum wage laws with which they must comply, which would affect the

¹¹⁰ *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 896 N.E.2d 967, 972 (Ohio 2008).

¹¹¹ *Id.*

¹¹² *Mendenhall*, 881 N.E.2d at 260–61.

¹¹³ *Am. Fin. Servs. Ass'n v. City of Cleveland*, 858 N.E.2d 776, 781–84 (Ohio 2006).

¹¹⁴ *Id.* at 781.

¹¹⁵ *State ex rel. Evans v. Moore*, 431 N.E.2d 311, 312 (Ohio 1982).

¹¹⁶ Noam Scheiber, *Raising Floor on Minimum Wage Pushed Economy into the Unknown*, N.Y. TIMES (July 26, 2016), <https://www.nytimes.com/2015/07/27/business/economy/scale-of-minimum-wage-rise-has-experts-guessing-at-effect.html>.

¹¹⁷ Scott, *supra* note 11.

¹¹⁸ See Emily Badger, *Cities Are Passing Higher Minimum Wages – and Leaving the Suburbs Further Behind*, WA. POST (June 10, 2014), https://www.washingtonpost.com/news/wonk/wp/2014/06/10/cities-are-passing-higher-minimum-wages-and-leaving-the-suburbs-further-behind/?utm_term=.3920ec19d3da.

¹¹⁹ *See id.*

entire state.¹²⁰ Businesses operating in states with patchwork wage laws, such as California, are burdened by the cost of compliance with the different wage rates of cities where they do business.¹²¹ This issue would conceivably also arise in Ohio if Ohio also adopted a patchwork system of minimum wage laws. If it becomes more burdensome for businesses to operate in Ohio, fewer jobs will be present in the state, which would affect Ohio as a whole, not only municipalities with higher minimum wages.¹²² Therefore, because the effects of municipal minimum wage increases would not be contained to each specific municipality that chooses to enact such an ordinance, minimum wage laws in Ohio are a statewide concern and a statewide system is needed to regulate this issue.¹²³

2. Exercise of a Municipal Police Power

Aside from the realization that raising the minimum wage in municipalities is a statewide concern, a city ordinance increasing the minimum wage would be an exercise of Cleveland's police powers.¹²⁴ A municipality exercises police power when the municipality acts to protect the "health, safety, and general welfare of the public."¹²⁵ In recent home rule disputes, when municipalities attempted to regulate predatory lending, fracking, speed cameras, or guns, municipal regulation of these activities was undisputed as an exercise of police power.¹²⁶ When municipalities regulate these activities, they are protecting the welfare of citizens; whether through preventing harmful lending practices, the speed of vehicles on the road, or the restriction of guns.¹²⁷ Likewise, the proposed minimum wage ordinance in Cleveland sought to improve the lives of low-income residents and to protect residents living on a minimum wage income.¹²⁸

While raising the minimum wage may not be apparent as a "police power," when looking at the intent behind the proposed Cleveland minimum wage increase, there is evidence the proposal sought to protect "the health, safety, and general welfare" of residents in Cleveland.¹²⁹ A desire to provide a better living wage for people living in the community fueled the push for a higher minimum wage in Cleveland.¹³⁰ In

¹²⁰ Scott, *supra* note 11.

¹²¹ Nagele-Piazza, *supra* note 74.

¹²² Scott, *supra* note 11.

¹²³ See *Am. Fin. Servs. Ass'n v. City of Cleveland*, 858 N.E.2d 776, 781 (Ohio 2006).

¹²⁴ *Mendenhall v. City of Akron*, 881 N.E.2d 255, 260 (Ohio 2008).

¹²⁵ See *id.*

¹²⁶ See, e.g., *Am. Fin. Servs.*, 858 N.E.2d at 782; *Ohioans for Concealed Carry, Inc., v. City of Clyde*, 896 N.E.2d 967, 972 (Ohio 2008).

¹²⁷ See, e.g., *Mendenhall*, 881 N.E.2d at 261; *Am. Fin. Servs.*, 858 N.E.2d at 782; *Ohioans for Concealed Carry*, 896 N.E.2d at 972.

¹²⁸ Tom Beres, *Raise Up Cleveland Vows to Put Minimum Wage Issue on Ballot*, WKYC (Sept. 9, 2016), <http://www.wkyc.com/news/local/raise-up-cleveland-vows-to-put-minimum-wage-issue-on-cle-ballot/316274748>.

¹²⁹ *Id.*

¹³⁰ *Id.*

September 2016, the spokesperson for Raise Up Cleveland, the group pushing the Cleveland ballot issue, said the group intended the proposed minimum wage increase to “lift [Cleveland residents] out of poverty.”¹³¹ Supporters argued that if businesses in Cleveland were forced to pay workers a higher wage, more Cleveland residents would be able to pay their bills, make rent, and provide necessities for themselves and their families.¹³² Accordingly, this type of wage-increasing ordinance aids the general welfare of the community and should be classified as a police power.¹³³

Therefore, increasing a municipal minimum wage is an issue of statewide concern, and this activity also falls into the category of a police power instead of local self-government.¹³⁴ Consequently, the first prong of the *Canton* test is satisfied. However, this does not automatically mean that Senate Bill 331 would supersede a potential municipal minimum wage increase.¹³⁵ Senate Bill 331 permissibly limits the police power of municipalities only if it qualifies as a “general law,” pursuant to the *Canton* general law test.¹³⁶

B. Senate Bill 331 as a General Law

After determining if the municipality is exercising a power of self-government or a police power, the home rule analysis then focuses on the state statute purporting to limit the power of the municipality.¹³⁷ If the state statute is a “general law,” then the statute supersedes the municipal ordinance, so long as the ordinance and the state law are actually in conflict.¹³⁸ In this context, the question is whether Senate Bill 331 is a general law according to the *Canton* test.¹³⁹ If Senate Bill 331 survives the scrutiny of the *Canton* analysis and is determined to be a general law, the state statute takes precedence over the municipal law.¹⁴⁰ However, if the statute does not survive the general law test, the statute is an unconstitutional overreach of the Ohio legislature’s power and the municipal ordinance stands.¹⁴¹ The state statute must meet all four of the prongs laid out in *Canton* to qualify as a general law.¹⁴²

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Mendenhall v. City of Akron*, 881 N.E.2d 255, 260 (Ohio 2008); *see also* *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 896 N.E.2d 967, 973 (Ohio 2008) (holding that a municipal ordinance enacted as “an emergency measure necessary for the preservation of the public peace, health and safety” was an exercise of the city’s police power).

¹³⁴ *Mendenhall*, 881 N.E.2d at 260.

¹³⁵ *Id.* at 261.

¹³⁶ *See City of Canton v. State*, 766 N.E.2d 963, 967–68 (Ohio 2002).

¹³⁷ *Mendenhall*, 881 N.E.2d at 261.

¹³⁸ *Id.* at 260.

¹³⁹ *See* S.B. 331, 131st Gen. Assemb., Reg. Sess. (Ohio 2016). The provision in Senate Bill 331 that prohibited municipalities from setting their own minimum wage was an amendment to Ohio Revised Code Section 4111.02.

¹⁴⁰ *Mendenhall*, 881 N.E.2d at 260.

¹⁴¹ *Id.*

¹⁴² *City of Canton v. State*, 766 N.E.2d 963, 967–68 (Ohio 2002).

1. Statewide and Comprehensive Legislative Enactment

The first *Canton* general law prong asks whether the statute is “part of a statewide and comprehensive legislative enactment.”¹⁴³ Therefore, in relation to the municipal minimum wage issue, the question is whether Senate Bill 331, which prohibits municipalities from setting their own minimum wage laws, is a statewide and comprehensive legislative enactment.¹⁴⁴ In *Ohioans for Concealed Carry*, the Ohio Supreme Court addressed this factor in relation to an Ohio statute that regulated the possession of concealed handguns.¹⁴⁵ This firearm statute was called into question as a home rule issue because cities wanted to pass ordinances to place more restrictions on concealed carry possession than the state statute.¹⁴⁶ In this situation, the Ohio Supreme Court examined the intent of the Ohio legislature in crafting the firearm statute to determine if it was part of a “statewide comprehensive legislative enactment.”¹⁴⁷ The court noted that when crafting the statute, the Ohio legislature said it wished to “ensure uniformity throughout the state regarding the authority granted to a person” who holds a concealed carry license.¹⁴⁸ The court then stated that because the legislative intent was to uniformly regulate the concealed carry of guns throughout Ohio, the statute at issue was part of a statewide and comprehensive legislative enactment.¹⁴⁹

Similar to the legislative session that passed the firearm statute in *Ohioans for Concealed Carry*, the Ohio legislature intended to create a uniform system of minimum wage laws when passing Senate Bill 331.¹⁵⁰ When lawmakers were considering the minimum wage provision in Senate Bill 331, some lawmakers were concerned of adverse effects to the state as a whole if each municipality were able to set their own minimum wage laws.¹⁵¹ Lawmakers were concerned that if different municipalities across the state had different wage laws, it would be burdensome for businesses to comply with a patchwork of minimum wage rates.¹⁵² Again, Ohio legislators had concrete examples from other states, such as Washington and California, that demonstrate a patchwork system of minimum wage laws is burdensome, complicated, and difficult for businesses.¹⁵³ To avoid anticipated problems stemming from inconsistent minimum wages throughout Ohio, the legislature enacted a statutory scheme to fix the problem.¹⁵⁴ Indeed, the entire purpose

¹⁴³ *Id.* at 968.

¹⁴⁴ *See* Ohio S.B. 331.

¹⁴⁵ *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 896 N.E.2d 967, 974 (Ohio 2008).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 974–75.

¹⁴⁸ *Id.* at 975.

¹⁴⁹ *Id.*

¹⁵⁰ Maher, *supra* note 14.

¹⁵¹ *Id.*

¹⁵² Beres, *supra* note 80.

¹⁵³ *See* Nagele-Piazza, *supra* note 74.

¹⁵⁴ Maher, *supra* note 14.

of the minimum wage provision in Senate Bill 331 was to preserve a uniform minimum wage throughout the state and to not allow municipalities to set inconsistent laws.¹⁵⁵ Just as the Ohio legislature in *Ohioans for Concealed Carry* passed a law to create a statewide enactment to ensure uniform gun laws, the Ohio legislature passed Senate Bill 331 to ensure uniform statewide minimum wage laws.¹⁵⁶ Therefore, Senate Bill 331, which solidified a uniform minimum wage throughout Ohio, is part of a “statewide and comprehensive legislative enactment” and passes the first part of the *Canton* general law analysis.¹⁵⁷

2. Uniformity throughout the State

The second prong of the *Canton* general law analysis asks whether the minimum wage provision in Senate Bill 331 “applies to all parts of the state alike and operates uniformly throughout the state.”¹⁵⁸ To satisfy this part of the test, there can be no part of Ohio to which the state statute does not apply.¹⁵⁹ The Ohio Supreme Court has addressed this question in *American Financial Services Association*.¹⁶⁰ In this case, the Ohio legislature passed a measure that regulated all loan-making entities in Ohio.¹⁶¹ There were no exceptions for certain businesses or areas of the state to which this law did not apply.¹⁶² A home rule challenge developed when the City of Cleveland passed ordinances that placed further restrictions on certain types of loans than did the state statute.¹⁶³ In this case, the Ohio Supreme Court held that because all loan-making organizations in Ohio were subject to the same statute without any exceptions, the second prong of the *Canton* general law test was satisfied.¹⁶⁴

When examining the text of Senate Bill 331, the law also appears to apply to all parts of the state equally.¹⁶⁵ The municipal minimum wage provision reads: “No political subdivision shall establish a minimum wage rate different from the wage rate required under this section.”¹⁶⁶ Similar to the state statute regulating predatory lending in *American Financial Services Association*, Senate Bill 331 provides no carve-out exception for a specific city or a specific region of the state.¹⁶⁷ Senate Bill 331 does not permit any Ohio municipality to raise its minimum wage above the state-specified

¹⁵⁵ Beres, *supra* note 80.

¹⁵⁶ *Ohioans for Concealed Carry, Inc., v. City of Clyde*, 896 N.E.2d 967, 974 (Ohio 2008).

¹⁵⁷ *See* S.B. 331, 131st Gen. Assemb., Reg. Sess. (Ohio 2016).

¹⁵⁸ *Mendenhall v. City of Akron*, 881 N.E.2d 255, 261 (Ohio 2008).

¹⁵⁹ *Id.* at 261–62.

¹⁶⁰ *Am. Fin. Servs. Ass’n v. City of Cleveland*, 858 N.E.2d 776, 783 (Ohio 2006).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* at 778.

¹⁶⁴ *Id.* at 783.

¹⁶⁵ *See* S.B. 331, 131st Gen. Assemb., Reg. Sess. (Ohio 2016).

¹⁶⁶ *Id.* (emphasis added).

¹⁶⁷ *Id.*

rate.¹⁶⁸ The legislature precisely intended to include all municipalities under the law to ensure all minimum wage laws were uniform in Ohio.¹⁶⁹ Therefore, because every municipality in Ohio is subject to the minimum wage provision in Senate Bill 331, the statute applies uniformly to all municipalities in Ohio and the second *Canton* general law prong is satisfied.¹⁷⁰

3. Overriding State Interest

The next prong of the *Canton* general law test asks whether Senate Bill 331 “sets forth police, sanitary, or similar regulations, rather than only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations.”¹⁷¹ This prong of the analysis is concerned with preventing the state from arbitrarily restricting municipalities from exercising legislative power.¹⁷² The state statute itself needs to be an exercise of police power to “protect the health, safety, or general welfare of the public.”¹⁷³ This part of the *Canton* test is satisfied “so long as the statute serves an overriding state interest with respect to police, sanitary, or similar regulations.”¹⁷⁴ In *Canton*, the Ohio Supreme Court addressed a state statute that required municipalities to allow manufactured homes in certain areas where single-family residences were permitted.¹⁷⁵ In this situation, the court determined that the intent of the state statute—which was to provide more affordable housing options across the Ohio—appeared on its face to serve a state interest.¹⁷⁶

There is no doubt that the Ohio legislature was restricting the power of municipalities when it passed Senate Bill 331.¹⁷⁷ The law prohibits municipal governments from setting their own minimum wage laws, which limits the scope of municipal authority.¹⁷⁸ Therefore, to satisfy the *Canton* test, Senate Bill 331 also needs to satisfy an overriding state interest.¹⁷⁹ Similar to how the Cleveland ballot proposal would be an exercise of police power because it sought to raise the minimum wage to protect the general welfare of the public, Senate Bill 331 is also an exercise of the state government’s police power to protect Ohio residents.¹⁸⁰ When enacting the statute, the Ohio legislature was concerned about the effects a much higher wage in Cleveland

¹⁶⁸ *Id.*

¹⁶⁹ Maher, *supra* note 14.

¹⁷⁰ City of Canton v. State, 766 N.E.2d 963, 968 (Ohio 2002).

¹⁷¹ *Id.*

¹⁷² Am. Fin. Servs. Ass’n v. City of Cleveland, 858 N.E.2d 776, 783 (Ohio 2006).

¹⁷³ *See id.* (explaining the *Canton* test).

¹⁷⁴ City of Dayton v. State, 87 N.E.3d 176, 184 (Ohio 2017).

¹⁷⁵ *Canton*, 766 N.E.2d at 965.

¹⁷⁶ *Id.* at 969.

¹⁷⁷ *See* S.B. 331, 131st Gen. Assemb., Reg. Sess. (Ohio 2016).

¹⁷⁸ *See id.*

¹⁷⁹ *Canton*, 766 N.E.2d at 969–70.

¹⁸⁰ *See* Ohio S.B. 331.

and other Ohio cities would have on businesses and citizens in the state.¹⁸¹ Lawmakers and municipal leaders were concerned that a \$15 minimum wage in Cleveland would overly burden businesses in the city, which would lead to businesses leaving Cleveland or employers being forced to downsize.¹⁸² Cleveland business, labor, and municipal leaders all believed this could lead to a loss of jobs Cleveland.¹⁸³ Indeed, studies backed up the concerns of Cleveland business leaders and the state legislature. For example, a study conducted by the Ohio Restaurant Association anticipated the potential effects of a \$15 minimum wage in Cleveland.¹⁸⁴ The study found that if the ballot proposal for a \$15 minimum wage went into effect, over 2,500 jobs would be lost in Cleveland.¹⁸⁵ Workers already making a low wage would sustain the vast majority of job loss.¹⁸⁶ Another study, published by the University of Washington, researched the current effects of the Seattle minimum wage increase.¹⁸⁷ The study found that low-income workers in Seattle were losing an average of \$125 per month as a result of reduced hours.¹⁸⁸ Consequently, lawmakers had reason to believe the effects would be similar in Cleveland, or any other large Ohio city, that passed a comparable wage increase. Therefore, through information available to lawmakers about the potential effects and consequences of such a dramatic increase, lawmakers had good reason to believe that such an increase would be harmful to Ohio residents.

Accordingly, in enacting Senate Bill 331, the Ohio legislature was doing more than just limiting the police power of municipalities to set their own minimum wages.¹⁸⁹ The state was acting to protect the general welfare of all Ohio residents and businesses who would be negatively affected by inconsistent minimum wage laws across Ohio.¹⁹⁰ Therefore, because in enacting Senate Bill 331 the Ohio legislature was protecting the welfare of low-wage workers, as well as the functionality of the business climate in Ohio generally, the third prong of the *Canton* general law analysis is satisfied.

4. Rule of Conduct on Citizens Generally

The fourth and last *Canton* prong to determine if Senate Bill 331 qualifies as a general law asks whether the statute “prescribes a rule of conduct on citizens generally.”¹⁹¹ To properly address this prong, it is important to begin with a potential argument that supporters of home rule for municipalities may raise. Some argue that in order for a state statute to apply to citizens generally, the statute is required to apply

¹⁸¹ Maher, *supra* note 14.

¹⁸² *Id.*

¹⁸³ Beres, *supra* note 80.

¹⁸⁴ *See* Barker, *supra* note 86.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Scheiber, *supra* note 9.

¹⁸⁸ *Id.*

¹⁸⁹ Maher, *supra* note 14.

¹⁹⁰ *Id.*

¹⁹¹ *Mendenhall v. City of Akron*, 881 N.E.2d 255, 260 (Ohio 2008).

to each individual citizen in particular and not to a municipal body.¹⁹² In the past, the Ohio Supreme Court has used this argument in relation to home rule challenges.¹⁹³ For example, in *City of Linndale v. State*, the Ohio Supreme Court ruled on a home rule challenge to a state statute that restricted municipal law enforcement officers' power to issue speeding tickets.¹⁹⁴ The court held that because the statute applied only to municipalities, and was not applicable to individual citizens, the law did not apply to citizens generally.¹⁹⁵ Thus, the *Linndale* court held the state statute failed the general law test and was therefore an unconstitutional restriction on home rule rights of municipalities.¹⁹⁶

However, subsequent case law demonstrates that the Ohio Supreme Court no longer interprets the fourth *Canton* prong in this way.¹⁹⁷ In *City of Cleveland v. State*, the Ohio Supreme Court examined an Ohio law that did not allow municipalities to place limits on the rights of citizens to carry firearms.¹⁹⁸ Before reaching the Ohio Supreme Court, an Ohio appellate court applied the reasoning of the *Linndale* court and held that this law did not satisfy the fourth general law prong because the law "did not prescribe a rule of law of conduct on citizens generally but instead limited lawmaking by municipal authorities."¹⁹⁹ The Ohio Supreme Court reversed the appellate court and held that the state statute at issue was a general law for purposes of *Canton*.²⁰⁰ The Ohio Supreme Court reasoned that even though the specific statute at issue primarily restricted local governments, there were many state laws that regulated firearms and that the statute was "part of an overall system of state laws that related to firearms."²⁰¹ When viewed in light the comprehensive statutory scheme regulating firearms, the court found that the overall system applied to citizens generally.²⁰² The court therefore held that when evaluating the fourth *Canton* prong, one must interpret the statute at issue as part of the entire legislative scheme to determine if it applies to citizens generally.²⁰³

Similar to the Ohio statute in *City of Cleveland v. State* that restricted the rights of municipalities to enact gun legislation, Senate Bill 331 restricts the rights of municipalities to create a minimum wage distinct from the state rate.²⁰⁴ Therefore, Senate Bill 331 restricts municipal lawmaking ability and does not apply to individual

¹⁹² *City of Dayton v. State*, 87 N.E.3d 176, 193 (Ohio 2017) (French, J., concurring).

¹⁹³ *See City of Linndale v. State*, 706 N.E.2d 1227, 1229 (Ohio 1999).

¹⁹⁴ *Id.* at 1230.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *See City of Cleveland v. State*, 942 N.E.2d 370, 377 (Ohio 2010).

¹⁹⁸ *Id.* at 372.

¹⁹⁹ *Id.* at 373, 377.

²⁰⁰ *Id.* at 378.

²⁰¹ *Id.* at 376–77.

²⁰² *Id.* at 377.

²⁰³ *Id.*

²⁰⁴ *See S.B. 331*, 131st Gen. Assemb., Reg. Sess. (Ohio 2016).

citizens.²⁰⁵ However, just as the court in *City of Cleveland v. State* examined the state statute in light of an “overall system of state laws related to firearms,” Senate Bill 331 should be viewed in light of an overall system of state laws related to employment and labor.²⁰⁶ Comparable with firearms, there are Ohio statutes that regulate all aspects of employee hiring, discrimination, compensation, and conduct.²⁰⁷ Consequently, when viewing the municipal wage provision of Senate Bill 331 in light of the “overall system of state laws” that relate to employment, the fourth *Canton* prong is satisfied.²⁰⁸

As all four prongs of the *Canton* general law analysis are satisfied, Senate Bill 331 is a general law. This satisfies the second prong of the *Canton* analysis, which asks whether the state statute in question is a general law.²⁰⁹

C. Conflict between the State Law and Municipal Ordinance

Once the reviewing court determines that the state statute in question is a general law, the court will turn to the final part of the *Canton* home rule test—whether there is an actual conflict between the state statute and the municipal ordinance.²¹⁰ Therefore, even if the court does determine the state statute is a general law, the municipal ordinance stands if there is no conflict between the state statute and the municipal ordinance.²¹¹

Accordingly, the issue in relation to the minimum wage situation is whether a municipal ordinance that raises a city’s minimum wage is in conflict with the wage provision in Senate Bill 331, which states: “No political subdivision shall establish a minimum wage rate different from the wage rate required under this section.”²¹² The current test the Ohio Supreme Court uses to determine whether a conflict exists is the “contrary directives” test, which asks “whether the ordinance prohibits that which the statute permits, or vice versa.”²¹³

In *Ohioans for Concealed Carry*, the Ohio Supreme Court applied the contrary directives test to a state statute and a municipal ordinance concerning the possession of firearms.²¹⁴ The Ohio Supreme Court noted that the state statute permitted gun owners to possess firearms, subject to certain exceptions, such as the prohibition on the possession of firearms in schools.²¹⁵ The statute did not prohibit the

²⁰⁵ *Id.*

²⁰⁶ *See Cleveland*, 942 N.E.2d at 376–77.

²⁰⁷ *See* Melissa Boyce et al., *Labor and Employment Law Overview: Ohio*, XPERT HR (Jan. 2016), <http://www.xperthr.com/employment-law-manual/labor-and-employment-law-overview-ohio/244/>.

²⁰⁸ *See Cleveland*, 942 N.E.2d at 376–77.

²⁰⁹ *City of Canton v. State*, 766 N.E.2d 963, 968 (Ohio 2002).

²¹⁰ *Mendenhall v. City of Akron*, 881 N.E.2d 255, 262–63 (Ohio 2008).

²¹¹ *Id.*

²¹² *See* S.B. 331, 131st Gen. Assemb., Reg. Sess. (Ohio 2016); OHIO REV. CODE ANN. § 4111.02 (2017).

²¹³ *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 896 N.E.2d 967, 976 (Ohio 2008).

²¹⁴ *Id.*

²¹⁵ *Id.* at 969.

possession of guns in public city parks.²¹⁶ However, a municipal ordinance later prohibited the possession of guns in public parks.²¹⁷ Because the state statute permitted the possession of firearms in public parks, while the municipal ordinance prohibited this activity, the Ohio Supreme Court held the state statute and the municipal ordinance were in conflict.²¹⁸

A similar conflict would exist if a municipality passed a wage law that required employers to pay more than the state minimum wage.²¹⁹ Senate Bill 331 permits employers to pay the state minimum wage and explicitly says municipalities cannot force employers to pay more than the state minimum wage rate.²²⁰ However, a municipal ordinance raising the minimum wage would prohibit employers from paying only the state minimum wage rate and would require employers to pay above the state minimum wage.²²¹ Therefore, when applying the contrary directives test, it is apparent a municipal wage ordinance would prohibit what the state statute permits, specifically, paying the state-dictated minimum wage rate.²²²

Therefore, because all three prongs of the *Canton* test are satisfied, it would not be within the City of Cleveland's home rule authority, or any other Ohio municipality, to set a citywide minimum wage rate greater than the rate set by the state legislature. Consequently, Senate Bill 331 would supersede any municipal ordinance in Ohio attempting to set a city-specific minimum wage. This means that any potential minimum wage increase that would apply to Ohio needs to be accomplished at the state level.

IV. CONCLUSION

As previously stated, it is extremely difficult to support a family and to provide even basic necessities while earning a minimum wage income.²²³ Consequently, there is no doubt that discussions related to increasing the minimum wage should continue. However, there is a right way and a wrong way to address this issue and to go about raising the minimum wage. While there are cities in other states that have raised their minimum wage rates to be higher than a state-mandated minimum wage rate, this approach is not a legal way to address the minimum wage issue in Ohio.²²⁴

While municipalities in Ohio have home rule authority to set certain types of municipal laws, this power is confined by the application of the *Canton* test.²²⁵ When applying the *Canton* test to the minimum wage issue, it is apparent that municipalities

²¹⁶ *Id.*

²¹⁷ *Id.* at 970.

²¹⁸ *Id.* at 976.

²¹⁹ See S.B. 331, 131st Gen. Assemb., Reg. Sess. (Ohio 2016).

²²⁰ *Id.*

²²¹ Atassi, *supra* note 79.

²²² See *Ohioans for Concealed Carry*, 896 N.E.2d at 976.

²²³ See Imbert, *supra* note 1.

²²⁴ See *supra* Part III.

²²⁵ See *supra* Part II.

do not enjoy the legal right, pursuant to Ohio home rule authority, to set their own unique minimum wage rates.²²⁶ When applying the first *Canton* prong, a municipal ordinance attempting to establish a unique minimum wage would not be an exercise of local government, but rather an exercise of a police power, which weighs against municipalities setting their own minimum wages.²²⁷ Senate Bill 331 also qualifies as a general law under the second *Canton* prong.²²⁸ Finally, because a potential municipal wage ordinance would be in conflict with Senate Bill 331, all three prongs of the *Canton* home rule test point to the conclusion that municipal minimum wage increases are outside the scope of home rule authority for cities in Ohio.²²⁹

Although minimum wage reform is an important topic that should be discussed and debated, the proper vehicle for reforming minimum wage laws in Ohio is not through municipal ordinances. The potential issues implicated by an increase in minimum wage are too important, and have too much of a statewide impact, to be handled at the municipal level. Instead, Ohio cities should work together with state legislators to set a statewide minimum wage rate that provides a fair wage for Ohio workers without the negative statewide consequences of city-specific minimum wage increases.

²²⁶ *See supra* Part III.

²²⁷ *See id.*

²²⁸ *See id.*

²²⁹ *See id.*