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NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION

OHIO

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About this Document: This is an excerpt of a longer report, *Navigating State Law in Local Climate Action*, which covers nineteen states. The excerpt below contains the report's introduction, along with information and analysis related only to Ohio. The full report, as well as other state-specific reports, are available in Columbia Law School's Scholarship Archive.

INTRODUCTION

Local governments are well-positioned to lead the fight against climate change by reducing community-wide greenhouse gas emissions, promoting renewable energy resources, and otherwise advancing climate mitigation and adaptation goals. Many local governments have already taken actions, and there is more they can do. In taking action to mitigate and adapt to the climate crisis, local governments must be aware of and act consistently with preemptive state laws that limit their authority. This report provides state-by-state information, resources, and analysis for nineteen states on key state-local preemption issues.

1. CROSS-CUTTING THEMES

The courts, constitutions, and statutes of each state handle the balance of power between the state and its local governments differently. But broadly, all seek to offer local governments some degree of autonomy, usually expressed as a variety of "home rule," while preserving ultimate authority in the state itself. The specific ways in which the states wield their authority are similarly varied, but they usually include both instances where the state passes laws that withdraw whole fields from local regulatory authority, and ones in which states broadly regulate in an area but allow local governments latitude to regulate so long as there is no conflict between the two. The sections below provide general background on the kinds of considerations that shape the relationship between states and local governments, and the chapters that follow expand on each in the context of particular states.

2. SCOPE

The states covered in this report are ones within which the authors have ongoing research projects and partnerships. They represent several of the "swing" states that are the most closely politically divided, ones where control of the state is split between political parties, and others—like Texas and Florida—where legislatures have taken particularly noteworthy steps to preempt local climate law. For each state covered, the chapters highlight the sources of local authority to regulate and the limits imposed by the state, including: (1) constitutional and statutory delegations of home rule authority and police powers to local governments; (2) state law governing the nature and content of home rule charters, as well as preemption of local law generally; (3) a catalog of current state laws that may preempt local climate action; (4) leading case law on home rule and preemption of local law; (5) where applicable, information on recent and ongoing litigation; (6) a summary of how the state handles building codes; (7) discussion of legal considerations related to public utilities; (8) helpful secondary sources; and (9) additional relevant information.

Many of the issues presented in each state's preemption case law section in this report arise outside the environmental, energy, and climate context. This is intentional, as case law that specifically discusses climate-related preemption measures is too limited to fully illustrate the doctrines through which courts would likely

consider those cases. We would not be able to explain state-specific preemption doctrines by only examining cases that are topically relevant.

These resources are intended to help local governments, policymakers, city attorneys, academics, advocates, and other stakeholders craft resilient climate policies, anticipate and respond to preemption challenges, and mobilize public engagement. The information provided is not exhaustive—it is intended instead as a starting point and a guide to the topics most relevant to state-local preemption. Links to publicly available versions of the constitutional provisions, statutes, and cases cited are provided where those are available.

3. HOME RULE AND THE POLICE POWER

Determining whether a local government may take a particular action involves a two-part inquiry, asking first whether the locality has the authority to legislate on a given issue, and second whether the state has preempted local governments from exercising that authority. The scope of local governments' authority to legislate is significantly shaped by the extent to which their states have allowed for home rule.

Home rule is a constitutional or statutory delegation of authority from a state to its local governments, permitting them to govern within their jurisdictions and adopt laws, regulations, and policies across a broad range of subjects.[1] In the vast majority of states, this "commitment to local lawmaking capacity [is] codified in [state] constitutions and statutes."[2] The core purpose of home rule is to empower local governments to act independently on local matters, so long as their actions are not inconsistent with state law, the state constitution, or their own home rule charters.[3] Today, all but three states provide some level of home rule—forty-one via the state's constitution and six through statute.[4]

Local action in states without a home rule system is cabined by an approach that was first described by Iowa Supreme Court Chief Justice John Dillon, and which has come to be known as Dillon's Rule. Under that approach, courts considering the scope of local governments' authority recognize only those powers that "are essential to municipal government or that the state has explicitly given to them, including any powers that are necessary for or implied by those explicitly given powers."[5] When Dillon's Rule applies, local governments' ability to regulate is more restricted.

[1] *See* Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1124 (2007) (describing home rule as "a system of state and local relations that gives some degree of permanent substantive lawmaking authority to localities beyond that which was provided by the traditional Dillon's Rule regime."); NAT'L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE 21ST CENTURY (2020), https://perma.cc/A3VP-NXZZ.
[2] Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 2011 (2018), https://perma.cc/3B53-S66J.
[3] *See* NAT'L LEAGUE OF CITIES, *supra* note 1.
[4] *See* Briffault, *supra* note 2.
[5] *See City of Clinton v. Cedar Rapids & Missouri Railroad Co.*, 24 Iowa 455 (1868).

Home rule's "primary purpose and [] principal effect . . . has been to undo Dillon's Rule" and empower local governments to legislate proactively, without prior state approval.[6] However, even in states with expansive home rule systems, local authority is limited by the almost absolute power of state preemption.[7]

4. PREEMPTION

Broadly speaking, preemption is a legal doctrine that allows the federal or a state government to restrict or eliminate the authority of lower levels of government in a specific policy area.[8] There are three ways a state can preempt local action: (1) expressly through clear statutory language (known as "express preemption"); (2) by demonstrating the state's legislative intent to occupy a whole field of regulation (known as "field preemption"); or (3) by enacting state laws that conflict with local ones (known as "conflict preemption").[9] State governments can employ all or a mixture of preemption methods, depending on the state.

While related, home rule and preemption are distinct legal doctrines. Strong home rule increases baseline local authority but it does not limit a state's power to preempt particular laws or fields of regulation. Further, a municipality is generally only affected by preemption to the extent that its actions cross into areas of state concern. Home rule should be viewed as a source of local initiative, while preemption as a legal boundary.

Many state courts liberally construe home rule authority and avoid finding preemption under certain conditions. A few states, like Ohio, have even reined in state power in order to protect local lawmaking.[10] In *City of Canton v. State*, the Supreme Court of Ohio held that "a state law preempting local regulation cannot merely block local action but must include some substantive replacement regulation."[11] Home rule has developed differently in each state, resulting in a patchwork of fifty distinct and nuanced systems of local power.

5. KEY ENVIRONMENTAL, ENERGY, AND CLIMATE CASES

In most states, there is relatively little preemption case law specific to environmental issues. Where there are cases, they are not broadly applicable because of each state's unique home rule and preemption frameworks. As a result, many of the issues discussed in each state's preemption case law section fall outside the environmental, energy, and climate context. That said, some state courts have decided significant preemption disputes in the environmental, energy, and climate sectors. Even though each state's decisions are not binding on other states, courts in states in which there is little applicable case law may find these examples persuasive:

[6] *See* Briffault, *supra* note 2, at 2012.
[7] *Id*.; Diller, *supra* note 1, at 1126–27.
[8] *See* *Arizona v. United States*, 567 U.S. 387, 398–99 (2012) (explaining the principle of supremacy).
[9] *See* *Holt's Cigar Co. v. City of Philadelphia*, 608 Pa. 146, 153 (2011).
[10] *See, e.g.*, *City of Canton v. State*, 95 Ohio St. 3d 149, 151–52 (Ohio 2002).
[11] *See* Briffault, *supra* note 2, at 2013; *City of Canton*, 95 Ohio St. 3d at 152–53.

- **Buildings:** *Glen Oaks Village Owners, Inc. v. City of New York*, No. 42, 2025 WL 1458090 (N.Y. May 22, 2025) (holding that New York State's climate law, the Climate Leadership and Community Protection Act (CLCPA), does not field preempt Local Law 97, New York City's building performance standards);
- **Oil & Gas:** *Wallach v. Town of Dryden*, 23 N.Y.3d 728 (2014) (holding that New York's Oil, Gas and Solution Mining Law does not preempt local zoning laws that ban oil and gas production activities, including hydrofracking);
- **Renewable Energy:** *Town of Copake v. New York State Off. of Renewable Energy Siting*, 191 N.Y.S.3d 181 (N.Y. App. Div. 3d Dept. 2023) (upholding the discretionary authority of New York State's Office of Renewable Energy Siting to override local restrictions on major renewable energy facilities when such a restriction is "unreasonably burdensome in view of the CLCPA targets and the environmental benefits" of the facility); and
- **Utilities:** *StopAquila.Org v. Aquila*, 180 S.W.3d 24 (Mo. Ct. App. 2005) (holding that state public utilities law does not preempt local zoning law); *PPL Electric Utilities v. City of Lancaster*, 214 A.3d 639 (Pa. 2019) (state public service law field preempted a municipal ordinance that imposed additional controls on state-regulated public utilities for the use of the municipality's rights-of-ways); *Boston Edison Co. v. City of Boston*, 459 N.E.2d 1231, 1234 (Mass. 1984) (holding that local ordinances that regulate utilities are broadly preempted by comprehensive state legislation that occupies the field of utility regulation); *Boston Gas Co. v. City of Somerville*, 652 N.E.2d 132 (Mass. 1995) (holding a local ordinance was preempted by state law governing the sale of gas and electricity by public utilities because the ordinance imposed additional requirements on gas companies that were inconsistent with the state law).

6. THE POLITICS OF PREEMPTION

Preemption exists in every state and, as a legal concept, is content neutral. States have used their preemptive powers across diverse subject matters including, for example, laws that restrict local taxation authority,[12] ones that regulate alcohol ordinances,[13] and others that occupy the field of firework regulation.[14] Historically, preemption "consisted of a judicial determination of whether a local law conflicted with preexisting state law."[15] Over the past two decades, though, state legislatures have aggressively and frequently used preemption to enact sweeping statutes barring "local efforts to address a host of local actions."[16] This trend, sometimes referred to as "New Preemption," is characterized deregulatory action against larger, often progressive cities—either to prevent the enactment of certain ordinances or to retaliate against those already passed.[17] A quintessential example of this style of preemption occurred in 2016, when Alabama enacted legislation preempting local

[12] *See, e.g.*, *Mayor of Ocean Springs v. Homebuilders Ass'n of Mississippi*, 932 So. 2d 44 (Miss. 2006).
[13] *See, e.g.*, *State v. Williams*, 283 N.C. 550 (1973).
[14] *See, e.g.*, *People v. Bahnke*, 2024 WL 647931 (Mich. App. Feb. 15, 2024).
[15] *See* Briffault, *supra* note 2, at 1997.
[16] *Id*.
[17] *See generally* Briffault, *supra* note 2.

minimum wage regulation just two weeks after Birmingham passed an increase.[18] On the climate front, one of the most replicated state preemption laws has been the so called "ban on natural gas bans," which swept through conservative states after Berkeley, California enacted an ordinance prohibiting natural gas piping in new construction in 2019.[19] Recent preemption of local climate-related laws fits squarely within the framework of New Preemption, with conservative-led states increasingly targeting climate-related initiatives led by progressive city governments.

* * *

There is an observable trend towards state governments seeking to preempt local climate-related actions, but how and to what extent states will succeed in that effort depends on specific circumstances and varies significantly by state. The following chapters offer a state-by-state primer on state preemption of local action in nineteen states, with particular attention to climate considerations.

[18] *See* Yuki Noguchi, *In Battle Pitting Cities Vs. States Over Minimum Wage, Birmingham Scores A Win*, NAT. PUB. RADIO (July 27, 2018), https://perma.cc/82SY-KUXS.

[19] Berkeley's ordinance was later repealed after losing a federal preemption challenge in federal court. *See Cal. Restaurant Ass'n v. City of Berkeley*, 89 F.4th 1094 (9th Cir. 2024); BERKELEY, CAL., CITY CODE § 12.80 (repealed by Ord. No. 7907-NS (2024)).

OHIO

1. DELEGATION OF HOME RULE AUTHORITY AND POLICE POWER

Ohio's constitution grants municipalities home rule authority and the power to adopt a charter, vesting local governments with police power and the power to legislate on matters related to local self-government so long as the ordinances are not in conflict with general state laws and matters of statewide concern.

1.1 Constitutional Provisions

Ohio Const. art. XVIII, § 7: "Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government."

Ohio Const. art. XVIII, § 3: "[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." This section delegates both home rule authority and the police power. The third clause, "in conflict with general laws," modifies the second clause, but not the first clause. In other words, municipalities that exercise the police power cannot conflict with the general laws of the state.

1.2 Statutory Provisions

Ohio appears to have not expanded on constitutional home rule authority or police power in statutes.

2. HOME RULE CHARTERS

Hundreds of cities in Ohio have adopted city charters, including the six most populous municipalities: Columbus, Cleveland, Cincinnati, Toledo, Akron, and Dayton. Non-chartered cities legislating on matters of local self-government are limited by whether the exercise of a power is a substantive exercise of power or a procedural exercise of power. A non-chartered city may "enact an ordinance which is at variance with state law in matters of substantive local self-government," but for procedural matters of local self-government, they must adhere to state law. *See* *Northern Ohio Patrolmen's Benevolent Ass'n v. City of Parma*, 61 Ohio St. 2d 375, 378, 382 (Ohio 1980); *see also* *Morris v. Roseman*, 162 Ohio St. 447 (1954). There is currently no clear judicial rule on whether a matter of local self-government is procedural or substantive. For example, state law has prevailed where a non-chartered village did not comply with state law procedure for adopting zoning ordinances. *Morris*, 162 Ohio St. In *State ex rel. Ziegler v. Hamilton Cty. Bd. of Elections*, Ohio's Supreme Court invalidated a Fairfax Village ordinance because it set qualifications for village council members that deviated from qualifications set at the state level. 621 N.E.2d 1199 (Ohio 1993). In contrast to non-chartered cities, a chartered city's exercise of either a procedural or substantive power of local self-government prevails over a conflicting state statute. *See* *Leavers v. City of Canton*, 1 Ohio St. 2d 33 (Ohio 1964).

Ohio city charters typically claim the fullest extent of municipal home rule powers. For example, the Columbus City Charter describes its powers with the following language: "[Columbus] shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Ohio . . ."

3. PREEMPTION OF LOCAL LAW

Case law in Ohio suggests that courts recognize conflict preemption and possibly field preemption. *See, e.g.*, *Am. Fin. Servs. Assn. v. City of Cleveland*, 112 Ohio St. 3d 170, 175 (Ohio 2006) ("[C]ourts should consider the [statewide-concern doctrine] when deciding whether . . . a comprehensive statutory plan is, in certain circumstances, necessary to promote the safety and welfare of all the citizens of this state."). But across different types of preemption, the *Canton* test (described below) has become the primary home rule analysis tool for Ohio courts, rendering the state's preemption framework somewhat of an anomaly among the other states in this report.

Ordinances related to matters of local self-government are generally not preemptable, whereas ordinances that are exercises of the local police power can be. In *City of Canton v. State*, 95 Ohio St. 3d 149 (Ohio 2002), Canton extended a prohibition on using mobile homes for residential purposes to include manufactured homes. In response, the Ohio General Assembly enacted a law barring political subdivisions from restricting the location of permanently sited manufactured homes in zones where single-family homes were permitted. *Id.* at 150. Canton challenged the law as an unconstitutional infringement on its municipal home rule authority under the Ohio Constitution. The Ohio Supreme Court ultimately ruled in favor of Canton and solidified the prevailing framework of analysis under Ohio law for disputes around home rule authority. *Id*. at 153. If a state statute is deemed a general law, the local law is preempted only if it conflicts with that general law. Thus, for a local law to be preempted by a state law: (1) the state law must be in conflict with the municipal ordinance; (2) the ordinance must be an exercise of the police power, rather than local self-government; and (3) the statute must be a general law. *Id*. at 151. The court further scrutinized the third prong, noting that "to constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations [that serve an overriding state interest], rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally*." Id*. at 152–53. The Court held that the challenged statute was an attempt to limit municipal lawmaking by limiting the ability of Ohio political subdivisions to control their communities' zoning. *Id*. at 157.

Following *Canton*, in general, local enactments related to "the power of local self-government" are immune from state preemption. *See Am. Fin. Servs. Assn. v. City of Cleveland*, 112 Ohio St. 3d 170, 174 (Ohio 2006). As noted by a 2024 brief for the Ohio General Assembly, the scope of "all powers related to self-government" does not carry a judicial definition, but the Ohio Supreme Court in 1958 stated that local self-government authority "relates solely to the government and administration of the internal affairs of the municipality." *Village of*

Beachwood v. Bd. of Elections, 148 N.E. 2d 921 (Ohio 1958). Courts have found several subject areas to be matters of local self-government, including improving, leasing, and conveying municipal property, *Dies Electric Co. v. Akron*, 62 Ohio St. 2d 322 (1980), and the manner and method of municipal expenditures, *State ex rel. Cronin v. Wald*, 26 Ohio St. 2d 22 (1971), among others.

Separately, local governments' power to adopt and enforce ordinances that are exercises of the police power granted under Section 3 of Article XVIII is limited only to the extent they are in conflict with a general law of the state. As the Ohio Supreme Court clarified in 2017, "a local ordinance is preempted only when a general law of the state directly conflicts with it . . . A conflict exists if the ordinance permits or licenses that which the statute forbids and prohibits, or vice versa." *State ex rel. Rocky Ridge Dev., L.L.C. v. Winters*, 151 Ohio St. 3d 39, 42–43 (Ohio 2017) (internal quotations omitted).

3.1 State Laws with Potential for Local Climate Preemption

Building Electrification. Ohio Rev. Code § 4933.1: This bars cities from enacting prohibitions on the use of natural gas in buildings. Municipalities may not "enact any ordinance or resolution or promulgate or impose any building code, contractual provision, or other requirement that limits, prohibits, or prevents residential, commercial, or industrial consumers within their boundaries from using the following: [d]istribution service or retail natural gas service. . . [and] propane" (internal numbering and punctuation omitted).

Plastic Bags. Ohio Rev. Code § 715.013(B): Under this law, "[n]o municipal corporation may impose any tax, fee, assessment, or other charge on auxiliary containers [i.e., plastic bags], on the sale, use, or consumption of such containers, or on the basis of receipts received from the sale of such containers." Another related law states that "a person may use an auxiliary container for purposes of commerce or otherwise." Ohio Rev. Code § 3736.021.

Education. Enact Ohio Higher Education Enhancement Act of 2023, S.B. 83, 135 Gen. Assemb., Reg. Sess. (2023) (failed): This bill contained a wide-ranging set of rules for public colleges and universities that might have changed the way climate policies are discussed in higher education.

4. CASE LAW ON HOME RULE AND PREEMPTION OF LOCAL LAW

Since 2002, the *Canton* test has been the usual judicial tool to determine whether state law improperly infringes on municipal power under the Home Rule Amendment. Courts in Ohio have tended to restrict home rule authority using the *Canton* test, "frequently rul[ing] in favor of the state" in home rule cases.[20] Even still, the test has been criticized as being applied inconsistently and unpredictably.[21] In other words, the tendency of courts

[20] Matthew Mahoney, *Home Rule in Ohio: General Laws, Conflicts, and the Failure of the Courts to Protect the Ohio Constitution*, 67 CLEV. ST. L. REV. 113 (2019), https://perma.cc/2U4V-JWJB; *see City of Canton v. State*, 95 Ohio St. 3d 149 (Ohio 2002) (articulating the *Canton* test).

[21] Proponents of the test would disagree and would suggest that the test accommodates the fact-intensive review necessary to decide home rule cases. *But see Dayton v. State*, 87 N.E.3d 176, 182–92 (Ohio 2017) (DeWine, J., dissenting).

applying the *Canton* test to favor state authority over municipal power is a good, but not certain, predictor of whether any particular state law will overrule local authority.

The cases below demonstrate how Ohio courts balance local control described in the state's Home Rule Amendment against the state's power to supersede local legislation.

- *Am. Fin. Servs. Assn. v. City of Cleveland*, 858 N.E.2d 776 (Ohio 2006): The Supreme Court of Ohio considered whether predatory lending was a "proper subject for regulation by local ordinance." *Id*. at 778. In 2002, Ohio's General Assembly enacted Substitute House Bill No. 386, 149 Ohio Laws, Part IV, 6938, which was intended to regulate predatory lending. *Id*. Subsequently, the city of Cleveland enacted Cleveland Codified Ordinance 659.02, which prohibited "any predatory loan" as defined in the local ordinance. *Id*. at 779. In response, American Financial Services Association filed a complaint alleging that Cleveland's predatory loan ordinances conflicted with state statutes related to predatory lending. *Id*. The key question on appeal was whether the state statutes were general laws, and if so, whether Cleveland's ordinances conflicted with them. In ruling that the state laws preempted Cleveland's ordinances, the court noted that "'[i]t is a fundamental principle of Ohio law that, pursuant to the "statewide concern" doctrine, a municipality may not, in the regulation of local matters, infringe on matters of general and statewide concern.'" *Id*. at 781–82. The court went on to state that the statewide concern doctrine fits neatly within the *Canton* test and that courts should engage in the doctrine when deciding whether "a comprehensive statutory plan is, in certain circumstances, necessary to promote the safety and welfare of all citizens of the state." *Id*. at 782. Finally, in its conflict analysis, the court summarized the state's jurisprudence with respect to the conflict analysis prong of the *Canton* test, concluding that "any local ordinances that seek to prohibit conduct that the state has authorized are in conflict with the state statutes and are therefore unconstitutional." *Id*. at 785.

- *State ex rel. Morrison v. Beck Energy Corp.*, 143 Ohio St. 3d 271 (Ohio 2015): This case examined whether Munroe Falls' local zoning ordinances could regulate oil and gas drilling operations despite state law granting exclusive regulatory authority to the Ohio Department of Natural Resources (ODNR). *Id*. at 272. The City of Munroe Falls argued that its zoning laws, which required local permits and notifications for oil and gas wells, should apply to drilling within its borders. However, Beck Energy contended that under Ohio Revised Code section 1509.02, ODNR had "sole and exclusive authority" to regulate oil and gas drilling, preempting local control. *Id*. at 272. In its *Canton* analysis, the court first determined that the city's ordinance was an exercise of the police power rather than local self-government, and that section 1509.02 is a general law. *Id*. at 275–77. Focusing on the second prong of the general law test, the court determined that the state statute set a comprehensive framework for regulating the location, permitting, and operation of oil and gas wells that applied uniformly throughout the state, to the exclusion of local governmental control. *Id*. Finally, rounding out the *Canton* test, the court found that the local ordinances conflicted with the state statute in two ways. *Id*. at 277–80. First, they attempted to impose additional local requirements—by prohibiting what section 1509.02 allows. *Id*. at 277. Second, Munroe Falls' ordinances conflicted with the

state's regulatory scheme because the language of the state demonstrated that the state "intended to preempt local regulation." *Id*. at 279. Therefore, the court concluded that R.C. 1509.02 preempted Munroe Falls' ordinances regulating oil and gas drilling.

- *Village of Struthers v. Sokol*, 140 N.E. 519 (Ohio 1923): After two residents were convicted of violating local liquor laws of the Village of Struthers and the City of Youngstown, on appeal the Supreme Court of Ohio considered whether the municipal ordinances were in conflict with general laws. In affirming the trial court judgment in each case, the court recognized in its conflict analysis that "[n]o real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa." *Sokol*, 140 N.E. at 521.

4.1 Other Relevant Cases

City of Dayton v. State, 151 Ohio St. 3d 168 (Ohio 2017) (finding that state statutes passed to regulate municipal use of traffic control devices violated the Home Rule Amendment because the statutes only limited municipal legislative authority without also serving an "overriding state interest").

Cleveland v. State, 138 Ohio St. 3d 232 (Ohio 2014) (state statute granting the Public Utilities Commission of Ohio authority to regulate towing companies included explicit preemptive language was held to be an unconstitutional limit on municipal authority in direct contradiction of the Home Rule Amendment's language).

These cases, particularly *Canton* and *American Financial Services Association* illustrate the core tension between municipalities exercising their police power and authority over purely local affairs and courts' ability to view issues affecting local government as matters of statewide concern.

4.2 Recent and Ongoing Litigation

On April 9, 2024, a group of fourteen chartered cities filed a complaint in Franklin County Court of Common Pleas challenging a state law[22] that would have preempted municipalities from regulating tobacco use. Governor DeWine initially vetoed the law before a Republican supermajority in the Ohio General Assembly overruled that veto. On May 23, 2024, the court issued an order that declared in part that section 9.681 was "an unconstitutional infringement on the rights of the Plaintiff municipalities to exercise their right to Home Rule pursuant to Article XVIII, Section 3 of the Ohio Constitution," and permanently enjoined the law. The state filed

[22] In relevant part, the new law, Ohio Rev. Code § 9.681, states that "[t]he regulation of tobacco products and alternative nicotine products is a matter of general statewide concern that requires statewide regulation. The state has adopted a comprehensive plan with respect to all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products. No political subdivision may enact, adopt, renew, maintain, enforce, or continue in existence any charter provision, ordinance, resolution, rule, or other measure that conflicts with or preempts any policy of the state regarding the regulation of tobacco products or alternative nicotine products . . . ."

a notice of appeal on May 29, 2024.[23] On July 8, 2025, the Ohio Court of Appeals affirmed the lower court's ruling. The state filed a notice of appeal to the Ohio Supreme Court on August 12, 2025.

On January 27, 2023, the City of Cincinnati challenged Ohio's firearm preemption statute, which was amended in 2018 and 2022. In a previous challenge predating those amendments, the state's earlier preemption statute was upheld as "a general law that displaces municipal firearm ordinances and does not constitutionally infringe on municipal home-rule authority."[24] In the 2023 case a trial court initially ruled in favor of Cincinnati; but in June 2024, the Court of Appeals reversed, holding that the firearm preemption amendments satisfied the *Canton* test. Accordingly, local firearm regulation in conflict with the statute is preempted. The court remanded the case back to the trial court.

5. BUILDING CODES

Ohio has adopted a statewide building code, which sets the floor for building construction requirements. Ohio Rev. Code § 3781.10. Municipalities may enact additional local regulations alongside the state building code, so long as they do not directly conflict with the Ohio Building Code or other state law. Ohio Rev. Code § 3781.01; *see also City of Springdale v. Ohio Bd. of Bldg. Standards*, 59 Ohio St. 3d 56, 59 (Ohio 1991). Local additions to the building code conflict with state rules "only when standards prohibit that which state allows or require that which state prohibits." *See City of Middleburg Heights v. Ohio Bd. of Bldg. Standards*, 65 Ohio St. 3d 510, 515 (Ohio 1992). For example, residential solar systems must conform to both state and local building codes where applicable. *See* Residential Code of Ohio, § 2301.

Ohio has adopted versions of the codes issued by the International Code Council (ICC).[25] The Ohio Building Code is an amended version of the 2021 edition of the International Building Code (IBC). Ohio's Energy Code is an amended version of the 2021 edition of the International Energy Conservation Code (IECC). The state has also adopted an amended version of the 2018 edition of the International Residential Code.[26] Ohio has adopted amended versions of the 2021 editions of other ICC published codes.

6. ELECTRIC UTILITY CONSIDERATIONS

What is the relevant utility regulatory body in the state? Who and what does it regulate? The Public Utilities Commission of Ohio (PUCO) regulates natural gas and electricity investor-owned utilities (among others), but does not regulate municipally-owned utilities. *See* Ohio Rev. Code § 4905.04; Ohio Rev. Code § 4905.02(A)(3). PUCO is solely responsible for regulating rates and public utility service, and has the exclusive authority to adjudicate formal complaints between utilities and customers. *Id.*; Ohio Rev. Code § 4905.26.

[23] The full case docket can be found by searching for the case here (24-cv-002865).
[24] *Cleveland v. State*, 128 Ohio St. 3d 135, 142 (2010).
[25] *Ohio Building Codes*, UpCodes, https://perma.cc/4T66-S8FS.
[26] *Ohio Residential Code 2019*, UpCodes, https://perma.cc/7QJ2-P8EG.

What authority, if any, do municipalities have over utilities? Municipalities have limited authority over electric utilities because the PUCO has exclusive jurisdiction over competitive retail electric service and most utility regulatory matters. *See* *Duke Energy Ohio, Inc. v. City of Hamilton*, 117 N.E.3d 1 (Ohio App. 12th Dist. 2018) (quoting *State ex rel. Cleveland Elec. Illum. Co. v. Cuyahoga Cty. Ct. of Com. Pleas*, 88 Ohio St. 3d 447 (Ohio 2000)) (PUCO has "exclusive jurisdiction over various matters involving public utilities, such as rates and charges, classifications, and service, effectively denying to all Ohio courts (except [the supreme court]) any jurisdiction over such matters.").

Still, cities do have options to influence or take control of their energy systems. They have control of their streets, can intervene in PUCO proceedings, and can municipalize their power systems: "Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility." Ohio Const. art. XVIII, § 4.

Can cities enter into franchise agreements with utilities? Yes, cities can enter into franchise agreements with utilities. *See* Ohio Const. art. XVIII, § 4; *see also* *Village of Lucas v. Lucas Loc. Sch. Dist.*, 442 N.E.2d 449, 452 (Ohio 1982). Under Ohio Rev. Code § 4939.03(C)(1) no electric or gas utility "shall occupy or use a public way without first obtaining any requisite consent of the municipal corporation owning or controlling the public way" (cleaned up).

How can cities intervene in Public Utilities Commission proceedings? Cities can intervene upon a timely motion showing that: "(1) A statute of this state or the United States confers a right to intervene. (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties." Ohio Admin. Code § 4901-1-11(A).

Does the state have an obligation to serve statute? Yes, Ohio's obligation to serve statute, Ohio Rev. Code § 4905-22, states: "Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable."

Has the state passed enabling legislation for community choice aggregation (CCA)? Yes, municipalities may create electricity aggregation programs with "opt-in" or "opt-out" provisions for their consumers. Ohio Rev. Code § 4928.20. Governmental aggregators purchase electricity for its members and leverages the aggregate demand of its member-group to negotiate electricity prices. For example, the City of Columbus established "Clean Energy Columbus" in 2020, a CCA program designed to support local clean energy for city residents and small businesses.

7. SECONDARY SOURCES

Matthew Mahoney, *Home Rule in Ohio: General Laws, Conflicts, and the Failure of the Courts to Protect the Ohio Constitution*, 67 CLEV. ST. L. REV. 113 (2019), https://perma.cc/83T9-8M59 (student note examining the history and judicial interpretation of Ohio' Home Rule Amendment and offering alternatives to current interpretive tools).

8. MISCELLANEOUS

In at least one case, the State of Ohio has attempted to make the argument that it could penalize nonconforming home rule municipalities into compliance by "encouraging" municipalities "to act or refrain from acting in a certain manner." The court did not reach the merits of that claim, however. *City of Toledo v. State*, 72 N.E.3d 692 (Ohio Ct. App. 2017), *rev'd* 2018 WL 3062477 (Ohio. Sup. Ct. 2018).