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Originalism at Home: The Original Understanding of Ohio's Home Rule Amendment

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ORIGINALISM AT HOME: THE ORIGINAL UNDERSTANDING OF OHIO'S HOME RULE AMENDMENT

Timothy D. Lanzendorfer[†]

ABSTRACT

Ohio's home rule amendment has great importance today. As Ohio's progressive cities and conservative legislature repeatedly collide on questions of policy, the courts must answer: Who wins? Or put another way, under Ohio's home rule amendment, what inherent power do Ohio cities possess that the state cannot invade? As presently conceived, the answer is anything but clear. The multi-factor *Canton* test is the current vehicle for resolving disputes around municipal autonomy and home rule authority, often placing the onus on the state to justify the attempted preemption of local ordinances. Based on the test's malleable nature, its results are unpredictable. But what is more, the *Canton* test is untethered to the home rule amendment's original meaning. This Article attempts to fill a gap in the literature to clarify that original meaning.

By examining Ohio's home rule amendment as originally understood upon its adoption in 1912, the result is clear: Ohio cities possess the inherent power to create policies so long as they are not preempted by general state laws of statewide applicability. This basic understanding stems not only from the beliefs of the drafters of the amendment but also those of the public at large. To reach this conclusion, this Article starts by building off of Justice Pat DeWine's dissent in *City of Dayton v. State*. Next, this Article turns to examine historical sources not before analyzed to find the amendment's original meaning. Ultimately, this Article concludes that, originally understood, the public expected Ohio's home rule amendment to not disrupt the preemptive power of the state legislature. Instead, the amendment merely flipped the then-existing presumption against city autonomy, enabling cities to create policy absent an explicit grant of state authority. Should the Ohio Supreme Court ever reconsider *Canton*, this Article should be used as an interpretive aid to help better understand the home rule amendment's original meaning.

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INTRODUCTION

Ohio’s constitutional home rule provision traces back to the Progressive movement.¹ Ratified as part of the Ohio Constitutional Convention of 1912, the amendment granted new powers to Ohio’s municipalities and enabled them to more effectively address the challenges ushered in by industrialization and rapid urbanization.² The amendment states in part:

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1. OHIO CONST. art. XVIII, § 3; *Municipal Home Rule*, OHIO HIST. CONNECTION, https://ohiohistorycentral.org/w/Municipal_Home_Rule [<https://perma.cc/B3A9-XCYU>] (last visited Oct. 1, 2022).
 2. *Progressive Movement*, OHIO HIST. CONNECTION, https://ohiohistorycentral.org/w/Progressive_Movement [<https://perma.cc/FA9B-2C4U>] (last visited Oct. 1, 2022). Municipal home rule is distinct from county home rule, which was adopted by constitutional amendment in 1933 but which

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.³

While the provision appears to read clear enough, courts have struggled to define and apply the amendment almost since its inception.⁴ Of unique contention has been the exact meaning of the term “general laws.”⁵ Because a general law passed by the state preempts a municipality’s authority, what constitutes a general law has become the defining line between state and local power in Ohio.⁶ And

conferred “many of the powers of local self-government which cities have enjoyed in this state since September 1912.” Harvey Walker, *County Home Rule in Ohio*, 1 OHIO ST. L.J. 11, 11 (1935); *see also* Earl L. Shoup, *Constitutional Problems of County Home Rule in Ohio*, 1 W. RSRV. L. REV. 111, 111–13 (1949); *see* Harvey Walker, *Municipal Government in Ohio Before 1912*, 9 OHIO ST. L.J. 1 (1948); John A. Fairlie, *The Municipal Crisis in Ohio*, 1 MICH. L. REV. 352 (1903) (providing additional background on the state of municipal authority before the home rule amendment’s adoption).

3. OHIO CONST. art. XVIII, § 3.
4. *Compare* Bauman v. State *ex rel.* Underwood, 171 N.E. 336, 336 (Ohio 1930), *with* State *ex rel.* Fairmount Ctr. Co. v. Arnold, 34 N.E.2d 777, 780 (Ohio 1941).
5. *See* City of Canton v. State, 2002-Ohio-2005, ¶¶ 19–21, 766 N.E.2d 963, 967–68 (Ohio 2002) (citing Linndale v. State, 706 N.E.2d 1227, 1229 (Ohio 1999)).
6. *See* Canton, 2002-Ohio-2005 ¶¶ 19–21, 766 N.E.2d at 967. Alternatively, some contend the key term in the amendment should actually be “in conflict.” Jefferson B. Fordham & Joe F. Asher, *Home Rule Powers in Theory and Practice*, 9 OHIO ST. L.J. 1, 25–27 (1948). As only those ordinances “in conflict” with state law are preempted, it has been argued that there must be affirmative state laws put forward to create a “head-on clash” and thus invalidate local policymaking. *Id.*

A statute placing limitations upon municipal powers may be a law of general application but, with the possible exception of the borrowing power, the grants of [the home rule amendment] cannot be defeated that way. True “conflict” arises when the legislature has legislated directly on the subject, not when it merely forbids municipal action.

Id. at 26–27 (internal citations omitted). *See generally* J. Gareth Hitchcock, *Ohio Ordinances in Conflict with General Laws*, 16 U. CIN. L. REV. 1 (1942). This sentiment appears currently in the *Canton* test. *Canton*, 2002-Ohio-2005 ¶¶ 21–27, 766 N.E.2d at 967–69. However, for the reasons explained in this Article, the 1912 public’s general understanding of the amendment likely did not rest on the understanding of the term “in conflict” but instead with the overarching scope of state power, which is better reflected by the term “general laws.”

while early observers hoped the language afforded near total protection for municipalities,⁷ the subsequent caselaw has been far from clear.

In 2017, the Ohio Supreme Court once again considered the meaning of “general laws” in *City of Dayton v. State*.⁸ In this case, the City of Dayton had passed ordinances enabling the use of red-light traffic cameras that would automatically photograph and ticket vehicles violating certain civil traffic laws.⁹ In response, the State enacted a law regulating and severely limiting the ability of municipalities, including Dayton, to employ red-light cameras and ticketing procedures.¹⁰ Dayton believed it had authority under Ohio’s home rule provision to enact the red-light ordinances, an authority the State had improperly tried to preempt, and so it sued to enjoin the law.¹¹ The State responded that the statute was a general law, meaning it preempted Dayton’s ordinances.¹² The dispute found its way to the Ohio Supreme Court.

A divided majority held in Dayton’s favor, finding that the state law was not a general law.¹³ To reach this result, the court applied the *Canton* test, a judicial doctrine created in 2002 to determine when a state law was a general law and so preempted a local ordinance.¹⁴ The *Canton* test is a four-pronged conjunctive analysis, stating that to preempt a local ordinance, a law must

- (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.¹⁵

Developed almost ninety years after the ratification of Ohio’s home rule amendment, the *Canton* test synthesized prior holdings in an

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7. Mayo Fesler, *The Progress of Municipal Home Rule in Ohio*, 5 NAT’L MUN. REV. 242, 250 (1916) (arguing four years after the amendment’s passage that “Ohio cities have . . . the broadest grant of local freedom of any cities of any state in the union.”).
 8. 2017-Ohio-6909, 87 N.E.3d 176 (Ohio 2017).
 9. *Id.* ¶¶ 2-3, 87 N.E.3d at 180.
 10. *Id.*
 11. *Id.* ¶ 11, 87 N.E.3d at 181.
 12. *Id.*
 13. *Id.* ¶ 34, 87 N.E.3d at 186.
 14. *Id.* ¶ 15, 87 N.E.3d at 182; *City of Canton v. State*, 2002-Ohio-2005, ¶ 21, 766 N.E.2d 963, 969 (Ohio 2002).
 15. *Dayton*, 2017-Ohio-6909 ¶ 15, 87 N.E.3d at 182; *Canton*, 2002-Ohio-2005 ¶ 21, 766 N.E.2d at 968.

attempt to create a cogent and workable test.¹⁶ Finding that the state law failed under prongs three and four, the majority held that the statute was not a general law and could not preempt Dayton’s red-light camera ordinance.¹⁷ But the majority was not without spirited dissents.

Justices Patrick DeWine and William O’Neill, then arguably the most conservative and most liberal members of the court, respectively, disputed whether the *Canton* test should have been applied at all.¹⁸ Both pointed out that the *Canton* test had been inconsistently applied since its inception, failing to create clarity or predictability for cities or the state.¹⁹ Justice DeWine, after determining the *Canton* test did not warrant stare decisis deference, argued that the court should abandon *Canton* and instead return to the original understanding of the term “general laws.”²⁰ Finding that a “general law” was originally understood to mean a statute with “statewide reach [that] treat[s] the objects of the law equally,” Justice DeWine contended that the court should have upheld the state law preempting Dayton’s red-light cameras.²¹

Scholars and courts have long advocated that constitutional provisions should be interpreted in light of their original public understanding.²² Whether or not the Ohio Supreme Court decides to follow Justice DeWine’s lead and revisit *Canton*, deciphering the original meaning of “general laws” has value. As increasingly complex questions of state and local power appear before the court, a search for the original understanding of “general laws” is well worth the candle. And indeed, if clarity and predictability are to be prized in an efficient system of law,²³ simplifying this question is of great importance.

Moreover, while Ohio’s home rule amendment is now over 100 years old, its proper understanding has great relevance in today’s political discourse. As seen in *Dayton v. State*, conflicts between the state and local governments abound in the modern era.²⁴ Ohio cities have increasingly pursued progressive objectives, sometimes placing themselves at

16. *Canton*, 2002-Ohio-2005 ¶¶ 21–33, 766 N.E.2d at 967–70.

17. *Dayton*, 2017-Ohio-6909 ¶¶ 34, 87 N.E.3d at 186–87.

18. *Id.* ¶ 47, 87 N.E.3d at 189–92 (DeWine, J. & O’Neill, J., dissenting).

19. *Id.*

20. *Id.* ¶ 86, 87 N.E.3d at 197 (DeWine, J., dissenting).

21. *Id.* ¶¶ 95–96, 87 N.E.3d at 198.

22. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 576–77 (2008).

23. *See generally* Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175 (1989).

24. *See, e.g.*, Kaitlin Durbin, *Cuyahoga County Plastic Bag Ban to Be Implemented This Year*, CLEV. PLAIN DEALER, <https://www.cleveland.com/news/2022/01/cuyahoga-countys-plastic-bag-ban-to-be-implemented-this-year.html> [https://perma.cc/Y9UY-YUGU] (Jan. 6, 2022, 1:12 AM).

odds with statewide policy.²⁵ In response, the Ohio General Assembly has responded by attempting to preempt local ordinances in favor of uniform statewide legislation.²⁶ Thereafter, local governments cry foul and head to court, citing their home rule authority.²⁷ For example, multiple cities and at least one county have attempted in recent years to ban the sale of plastic bags at grocery stores.²⁸ Fearing the impact to local business owners, the Ohio General Assembly passed legislation to preempt these local bag bans.²⁹ At the time of this writing, Cuyahoga County appears poised to disregard the state mandate and forge ahead with its ban.³⁰ Simply put, whether and how state law can trump a local bag ban turns on the authority localities enjoy under Ohio's constitutional order. Modern Ohio Supreme Court doctrine would apply the *Canton* test. But, as this Article demonstrates, the original understanding of Ohio's home rule amendment leads to a different result.

By following down the path Justice DeWine forged in his *Dayton* dissent, this Article finds the result clear: “general laws” refers to laws of uniform statewide application not limited to certain areas.³¹ In fact, the Ohio Constitutional Convention of 1912 delegates and the general public alike appear to have had few questions on this point.³² To reach this conclusion, this Article picks up where Justice DeWine left off and attempts to advance the conversation with a deeper look at the available evidence, including sources not previously explored in

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25. See, e.g., *id.*; Jeremy Pelzer, *Gov. John Kasich Signs Bill Blocking Cleveland's \$15 Minimum Wage Proposal*, CLEV. PLAIN DEALER, https://www.cleveland.com/open/2016/12/gov_john_kasich_signs_bill_blo.html [https://perma.cc/XKW4-JSEC] (Dec. 19, 2016, 8:07 PM).
 26. See, e.g., Marc Kovac & Randy Ludlow, *Due to Pandemic, DeWine to Sign Statewide Ban on Plastic Bag Bans Despite Veto Request*, COLUMBUS DISPATCH, <https://www.dispatch.com/story/news/politics/state/2020/09/28/ohio-gov-mike-dewine-sign-statewide-ban-plastic-bag-bans-despite-concerns-of-environmentalists/3560654001/> [https://perma.cc/598V-74EQ] (Sept. 28, 2020, 2:01 PM).
 27. See, e.g., *City of Dayton v. State*, 2017-Ohio-6909, 87 N.E.3d 176, 179–80 (Ohio 2017).
 28. See Durbin, *supra* note 24; *Plastic Bag FAQ*, CITY OF CIN., <https://www.cincinnati-oh.gov/oes/plastic-bag-faq/> [https://perma.cc/SL3R-VZ4T] (last visited Sept. 18, 2022).
 29. See Durbin, *supra* note 24.
 30. See *id.* (noting that the state mandate only prohibits the implementation of a bag surcharge, not a complete ban). On the other hand, Cincinnati appears to have “delayed indefinitely” their ban. *Plastic Bag FAQ*, *supra* note 28.
 31. This Article refers to this understanding as a “simple understanding” or “plain meaning” of the term. See *Dayton*, 2017-Ohio-6909 ¶¶ 81–91, 87 N.E.3d at 189–92 (DeWine, J. & O'Neill, J., dissenting); see also *supra* notes 18–21 and accompanying text.
 32. *Dayton*, 2017-Ohio-6909 ¶ 91, 87 N.E.3d at 197–98 (DeWine, J., dissenting).

scholarly literature. Part I discusses and builds upon Justice DeWine’s original research using dictionaries and existing caselaw. Part II takes a fresh look at the Ohio Constitutional Convention of 1912 transcripts to find delegates’ understanding of “general laws.” Part III explores newspaper reports on the amendment, both during and after the convention. Part IV synthesizes the available information and shows its potential use in practical application. Finally, the last Part offers a brief conclusion.

This Article does not explicitly advocate that the *Canton* test be abandoned. Such an argument would require a more robust examination of the modern reliance interests at stake and the intricacies of stare decisis.³³ But as courts consider the future of home rule in Ohio, a richer understanding of how the Ohio public saw the amendment upon ratification can only improve the dialogue. Should the Ohio Supreme Court revisit *Canton*, this Article should be relied upon as an interpretive aid to find the amendment’s original understanding.

I. DICTIONARIES AND EXISTING CASELAW SUPPORT AN INTERPRETATION OF “GENERAL LAWS” THAT LEAVES THE STATE EMPOWERED

As Justice DeWine argued in his *Dayton* dissent, the traditional methods of finding original understanding support a plain meaning of “general laws” that leaves the state able to preempt local laws. Both contemporary dictionaries and existing caselaw support that a general law was believed to be one applying throughout the state.

First, Justice DeWine discussed contemporary dictionaries from the time of ratification, supporting the proposition that a general law was one of wide applicability.³⁴ As Justice DeWine noted, the *Concise Oxford Dictionary of Current English* from 1912 states that “general” refers to something “[c]ompletely or approximately universal, including or affecting all or nearly all parts, not partial, particular, local, or sectional.”³⁵ Further, another dictionary at that time reported that “general statute, or general law” meant “one which affects equally all . . . things of the same class”; “[a]s opposed to ‘local,’ one operative throughout the jurisdiction of the legislative body.”³⁶ Thus, the average

33. See generally BRYAN A. GARNER, CARLOS BEA, REBECCA WHITE BERCH, NEIL M. GORSUCH, HARRIS L. HARTZ, NATHAN L. HECHT, BRETT M. KAVANAUGH, ALEX KOZINSKI, SANDRA L. LYNCH, WILLIAM H. PRYOR JR., THOMAS M. REAVLEY, JEFFREY S. SUTTON & DIANE P. WOOD, *THE LAW OF JUDICIAL PRECEDENT* (2016).

34. *Dayton*, 2017-Ohio-6909 ¶ 90, 87 N.E.3d at 197 (DeWine, J., dissenting).

35. *THE CONCISE OXFORD DICTIONARY OF CURRENT ENGLISH* 342 (H.W. Fowler & F.G. Fowler eds., 3rd ed. 1912).

36. WALTER A. SHUMAKER & GEORGE FOSTER LONGSDORF, *THE CYCLOPEDIA OF LAW* 409 (1912).

Ohioan at this time would understand “general” as meaning uniformity of application throughout the state.

Next, Justice DeWine examined how the public would have understood the term “general laws” as a term of art already interpreted by the courts.³⁷ Article II, section 26 of the 1851 Ohio Constitution required that “[a]ll laws, of a general nature, shall have a uniform operation throughout the state.”³⁸ In the following decades, the Ohio Supreme Court found that this clause required that laws have “uniform operation upon all those included within the class upon which it purports to operate.”³⁹ And while absent in early interpretations, over time the Ohio Supreme Court began to conflate this uniformity requirement with the term “general laws.”⁴⁰ Along these lines, the court recognized that the foil of a general law was a special or local law that only affected a certain part of the state or treated members of the same class differently.⁴¹ Thus, to exempt certain counties from a law creates an unconstitutional special law, mutually exclusive from a general law.⁴²

A general law did not need to apply equally to all people in the state but instead only apply equally to all those in the same targeted class.⁴³ For example, a law targeting only county officers, but all county officers in the state, was an acceptable general law despite not affecting all Ohioans equally.⁴⁴ Indeed, practically no law impacts every Ohioan equally, and so the term “general laws” necessarily cannot require such a high standard.

Moreover, in 1902, the Ohio Supreme Court acknowledged that the Ohio public understood a general law to be one of uniform statewide applicability. In *State ex rel. Wirsch v. Spellmire*,⁴⁵ the court considered a state law creating a single school district after the local voters had refused to establish one, even though the parties conceded that the subject matter of education was a statewide concern.⁴⁶ The court found the law unconstitutional because it violated the requirement that all

37. *Dayton*, 2017-Ohio-6909 ¶ 91, 87 N.E.3d at 197–98 (DeWine, J., dissenting).

38. OHIO CONST. art II, § 26.

39. *Senior v. Ratterman*, 11 N.E. 321, 327 (1887).

40. *See, e.g., Cincinnati St. Ry. Co. v. Horstman*, 73 N.E. 1075, 1076–77 (1905); *Platt v. Craig*, 63 N.E. 594, 596 (1902).

41. *See Hixson v. Burson*, 43 N.E. 1000, 1001 (1896) (“[I]t is certainly safe to say now that every subject of legislation is either of a general nature on the one hand, or local or special on the other. It can not be in its nature both general and special, because the two are inconsistent.”).

42. *See Oakman v. Ross Furniture Co.*, 20 Ohio C.C. 301, 302 (1907).

43. *See State ex rel. Wirsch v. Spellmire*, 65 N.E. 619, 622 (1902).

44. *See State ex rel. Guilbert v. Yates*, 64 N.E. 570, 571 (1902).

45. 65 N.E. 619 (1902).

46. *Id.* at 620, 622–23.

laws apply uniformly statewide.⁴⁷ In describing the uniformity requirement, the court recognized:

The [1851] constitution, including [Article II, section 26], was framed by the Constitutional Convention, and adopted by a vote of the electors of the state, and the language is not to be understood as strained, technical or mysterious; but so plain that any ordinary man may understand and comprehend it. The words of Sec. 26 of Art. 2 are plain and easily understood, and from the language used in the section, *any ordinary man would say that only general laws can be passed upon a subject-matter of a general nature.*⁴⁸

Thus, in 1902 the Ohio Supreme Court believed that the average Ohioan understood uniformity of statewide application to be synonymous with a general law.⁴⁹ While not cited by Justice DeWine, *Wirsch* reinforces his argument that this understanding was established and not in dispute in 1912.

Overall, Justice DeWine's analysis centered around these two traditional methods of finding original understanding. And while he did briefly discuss the Constitutional Convention debates, this Article takes the inquiry a step further. The following Part takes a closer look at the language, debates, and intrigues of the Constitutional Convention that gave Ohio its home rule amendment. Afterward, Part III dives into how newspapers informed the public about the amendment. In doing so, this Article offers a novel examination of just what the public would have believed the amendment accomplished.

II. OHIO CONSTITUTIONAL CONVENTION DELEGATES BELIEVED THAT THE HOME RULE AMENDMENT LEFT THE STATE IN CONTROL

The vigorous debates of the Ohio Constitutional Convention of 1912 make plain that delegates believed a general law to be one of uniform statewide application. Justice DeWine briefly discussed the convention debates in his *Dayton* dissent,⁵⁰ but his analysis only scratched the surface of the rich dialogue surrounding the amendment. Even if the ultimate hunt for original understanding concerns the Ohio public, the views of delegates bear special importance due to their representative composition and because they became the provision's primary advocates. And after looking to the convention transcripts, it

47. *Id.* at 623.

48. *Id.* at 621 (emphasis added).

49. *Id.*

50. *City of Dayton v. State*, 2017-Ohio-6909, ¶ 91, 87 N.E.3d 176, 197–98 (Ohio 2017) (DeWine, J., dissenting).

becomes evident that delegates believed the amendment would not detract from state power.

*A. Delegates' Understanding of "General Laws" Helps
to Show the Way the Public Would Have Understood the Term*

Some may contend that the views of delegates or drafters of a provision matter little compared to what the general voting public thought.⁵¹ However, this situation is unique; understanding the public's perspective of Ohio's home rule amendment requires a close reading of what delegates themselves believed.

First, most delegates lacked any special knowledge or training that would separate their understanding from that of the broader public. Delegates to the Ohio Constitutional Convention of 1912 mostly comprised laypeople, not lawyers or technocrats.⁵² While lawyers made up the plurality at 38 percent of all delegates, the majority of delegates had no formal legal training.⁵³ In fact, delegates presented an inclusive cross section of Ohio, including farmers, bankers, businessmen, teachers, ministers, physicians, laborers, college professors, editors, and even a former state librarian.⁵⁴ Therefore, the way delegates viewed the provision can help show the voters' perspective as well.

Second, and perhaps more relevant, delegates communicated their views widely to the public.⁵⁵ Delegates became some of the most vocal supporters of the 1912 amendments, including the home rule provision.⁵⁶ They championed their efforts through speeches across the state, in churches, granges, and union halls.⁵⁷ In fact, their campaigning appears to have been quite effective. Many of the state's established and influential stakeholders opposed the amendments, including business associations, farming organizations, and the Roman Catholic Church.⁵⁸ On the other hand, labor organizations and delegates themselves made up the most vocal supporters, and these groups were far better

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51. See John O. McGinnis & Michael B. Rappaport, *Unifying Original Intent and Original Public Meaning*, 113 NW. U. L. REV. 1371, 1376 (2019).
52. Lloyd Luther Sponholtz, *Progressivism in Microcosm: An Analysis of the Political Forces at Work in the Ohio Constitutional Convention of 1912*, at 42 (1969) (Ph.D. dissertation, University of Pittsburgh) (ProQuest).
53. *Id.*
54. *Id.*; Landon Warner, *Ohio's Constitutional Convention of 1912*, 61 OHIO ST. ARCHAEOLOGICAL & HIST. Q. 11, 18 (1952).
55. Sponholtz, *supra* note 52, at 242.
56. *Id.*
57. *Id.* at 241–42.
58. *Id.* at 222, 229–30, 232.

organized than their opposition.⁵⁹ And while labor forces like Samuel Gompers and the American Federation of Labor campaigned heavily for the amendments, voting returns were surprisingly light in labor precincts statewide.⁶⁰ Consequently, the efforts of labor organizations may not have been particularly effective. As a result, delegates' understanding and presentation of the amendments deserves close examination because their advocacy appears to have been uniquely influential.

Taken together, delegates' understanding of the term "general laws" offers strong evidence of the Ohio public's understanding. Given the convention's representative composition and delegates' effective advocacy, those hunting for original understanding must closely examine the transcript of the convention itself.

*B. Delegates Understood General Laws
to Be Those of Uniform Application Statewide*

The transcript of the Ohio Constitutional Convention of 1912 shows that delegates thought the home rule provision and the term "general laws" left state preemptive power intact. Upon inspection, the transcripts make evident that delegates already understood what "general laws" meant—laws that applied uniformly statewide. Moreover, delegates believed that the home rule amendment did not diminish state power and instead only granted new power to municipalities.

1. Delegates Thought It Already Well Established
that "General Laws" Meant Laws Applying Statewide

Delegates had no trouble seeing that "general laws" meant laws with uniform application across Ohio. Throughout convention discussions, the term "general laws" usually referred to laws that differed from special or local laws.⁶¹ Delegate Edward Doty of Cleveland, chief lieutenant to convention president Herbert Bigelow,⁶² informed delegates that "general law means for the whole state."⁶³ In

59. *Id.* at 241–42. Opponents did not mobilize until the end of the campaign; even then, they had to resort to distributing pamphlets because newspapers largely refused to print their largely inaccurate advertisements. Warner, *supra* note 54, at 27–28.

60. Samuel Gompers, *Vote "Yes" Urges Gompers, Labor Chief*, CIN. POST, Sept. 2, 1912, at 1; *Little Interest in Amendments Shown Over Ohio*, COLUMBUS EVENING DISPATCH, Sept. 3, 1912, at 1.

61. See C.B. GALBREATH, STATE OF OHIO, PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF OHIO 1436 (1912) [hereinafter DEBATES].

62. Sponholtz, *supra* note 52, at 52, 303.

63. DEBATES, *supra* note 61, at 1447.

fact, this unambiguous understanding factored into the amendment's final text.

The convention altered the text of the home rule amendment to reflect this plain understanding of "general laws." As initially introduced to the convention, the home rule amendment read:

Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws, *affecting the welfare of the state as a whole*.⁶⁴

The final nine words (italicized above) appeared as a late committee addition before reaching the convention floor, inserted by a home rule "radical" from Cincinnati.⁶⁵ He claimed his aim was to reinforce the powers of municipalities against that of the state.⁶⁶ However, these nine words became the center of a heated debate: Why did they appear at all? Were they not mere surplusage?⁶⁷ Indeed, under intense questioning, the lead advocate of the amendment, delegate and professor George Knight of the Ohio State University, could not articulate how these words did not create redundancy or surplusage.⁶⁸ Knight confessed that he personally believed that the words were "not necessary to accomplish the purpose intended."⁶⁹ Later, an unknown delegate defended the clause as a means to "safeguard" the existing meaning of "general laws."⁷⁰ Thus, the proposed words "affecting the welfare of the state as a whole" did not "add anything to the section" but were only added "[t]o strengthen the words 'general laws.'"⁷¹

Those nine words added no meaning because delegates thought it axiomatic that general laws necessarily affected the state as a whole.⁷² Indeed, Doty worried the public might be confused by such evident redundancy.⁷³ He contended that the words added nothing to the amendment's meaning "even after they ha[d] been weighted in

64. *Id.* at 1439 (emphasis added). Some delegates thought this phrase a covert attempt to allow municipalities to invalidate state liquor restrictions. *Id.* at 1441, 1469. One reason for the phrase's deletion was to prevent any dispute over the liquor issue from impeding the amendment's ratification. *Id.* at 1466–67; *see infra* Part III.B.

65. DEBATES, *supra* note 61, at 1457.

66. *Id.* at 1456, 1464.

67. *Id.* at 1439.

68. *Id.*

69. *Id.* at 1446.

70. *Id.* at 1472.

71. *Id.* at 1446.

72. *Id.*

73. *Id.* at 1468.

apothecary scales to the fraction of an ounce.”⁷⁴ Delegate Jones also thought it plain what “general laws” meant, saying “[t]he term ‘general law’ is one that has been the subject of interpretation for many years. Courts have thoroughly well settled the construction of that term and we need have no doubts about what the future rule will be.”⁷⁵ After this debate, delegates removed the nine redundant words.⁷⁶

Everyone in the convention hall understood a general law to merely be one affecting the entire state. The term concealed no specialized or technical meaning. Even Knight, as intimately familiar with the amendment as anyone, could find nothing to distinguish “general laws” from “affecting the welfare of the state as a whole.”⁷⁷ To delegates, these phrases were simply two ways to say the same thing.

2. Delegates Believed the Amendment Only Added to Municipal Power Without Impacting State Power

Convention delegates repeatedly heard that the home rule amendment did not limit state power and instead only augmented municipal power. With regularity, delegates were promised that the home rule provision aimed to grant greater flexibility to local governments, not take power from the state.⁷⁸

Professor George Knight outlined the amendment with a simple aim: empower municipalities. At the time of the convention, Ohio law required municipalities to be specifically authorized to act by state law before they exercised authority.⁷⁹ This cumbersome system prevented cities from efficiently tackling the growing challenges of urbanization and industrialization.⁸⁰ Cities had to grovel before the legislature to

74. *Id.* at 1472.

75. *Id.* at 1471–72. Justice DeWine included this quotation in his dissenting opinion in *City of Dayton v. State*, 2017-Ohio-6909, ¶ 91, 87 N.E.3d 176, 197–98 (Ohio 2017) (DeWine, J., dissenting).

76. DEBATES, *supra* note 61, at 1472–74. Doty worried the public would be confused by the redundancy because it could not be explained to even him, “an obtuse person.” *Id.* at 1468. In response, delegate Harris of Cincinnati retorted the drafting committee was “not expected to furnish [Doty] with the brains to understand” the clause. *Id.*

77. *Id.* at 1446.

78. *Id.* at 1433. Even well preceding the convention, no one believed home rule would grant unfettered power to municipalities over local issues. Charles Dick, *Unqualified Home Rule*, OHIO REPUBLICAN ST. NAT’L COMM. (1905), <https://catalog.library.ohio.gov:443/record=b1696633> [<https://perma.cc/9DDP-3NZU>] (“No Democrat in the Legislature which enacted the new municipal code asked for absolutely ‘unqualified Home Rule’ for cities, towns and villages There will never be such a condition as ‘free and unqualified Home Rule’ for cities ‘free from State interference.’”).

79. DEBATES, *supra* note 61, at 1433.

80. *Id.*

exercise any police power not already explicitly authorized.⁸¹ Knight presented the home rule amendment as flipping the presumption in order to “favor . . . the lawfulness of the municipality’s act.”⁸² Once passed, a municipality could exercise all police power “not forbidden by the lawmaking power of the state.”⁸³ Knight went to great lengths to hammer this point home. On five separate occasions, he reiterated that the amendment’s aim was to reverse the presumption against municipal power.⁸⁴

Conversely, Knight spoke in no uncertain terms that the state remained as dominant as ever.⁸⁵ Separating out state concerns from local, he stated, “I repeat, to draw as sharply and as definitely as possible, a line between those two things and to leave the power of the state as broad hereafter with reference to general affairs as it has ever been.”⁸⁶ Later, Knight hammered again that the amendment “d[id] not subtract a particle from the police power of the state”⁸⁷ As the amendment’s lead advocate on the convention floor, Knight received ample opportunity to repeatedly push this understanding on delegates.

After hearing such a forceful presentation from a lead sponsor, no delegate could doubt that the amendment would leave state power intact.⁸⁸ Before ratification, the state could preempt municipal ordinances. At the convention, Knight promised no changes to state police power. Therefore, delegates understood that the amendment left the state able to preempt local ordinances—so long as the laws applied to the entire state. And they understood that municipalities could act absent explicit state authorization while remaining fully vulnerable to preemption.⁸⁹

81. *Id.* Because each city had to be impacted uniformly by state law, this meant that one city’s attempt to receive more power from the state could be met by resistance from other cities that would be equally impacted by alterations in state law and disagreed with the change. *Near Home Rule*, COLUMBUS EVENING DISPATCH, Feb. 5, 1912, at 4 [hereinafter *Near Home Rule*] (publishing an editorial by the *Toledo Blade*).

82. DEBATES, *supra* note 61, at 1433.

83. *Id.*

84. *Id.* at 1433, 1439–41, 1448.

85. *Id.* at 1433.

86. *Id.*

87. *Id.* at 1440.

88. With the exception of special or local laws, which were already unconstitutional in Ohio since 1851. OHIO CONST. of 1851, art. II, § 26.

89. Even the most ardent supporters of home rule, like Mayo Fesler of the Cleveland Municipal Association, tacitly conceded that the convention delegates expected home rule to be constrained. *See* Fesler, *supra* note 7, at 246 (“We are hoping that the [Ohio Supreme Court] will . . . clear away any doubt as to how far the debates of the convention can be used in

III. THE CAMPAIGN FOR RATIFICATION IN NEWSPAPERS
LEND SUPPORT TO A SIMPLE UNDERSTANDING
OF “GENERAL LAWS”

The campaign to ratify Ohio’s home rule amendment in newspapers lends context and insight to the original public understanding of “general laws.”⁹⁰ Original understanding concerns what the public thought, so helpful clues can be found by looking where the public would find information in 1912: the newspapers. But examining contemporary newspapers presents a double-edged sword. While the public likely relied on them for information, newspapers clearly had agendas, and because they operated in an era of yellow journalism, their editorials and reports must be read with a critical eye.⁹¹ Further, no known newspaper directly addressed the meaning of the term “general laws,” instead describing the powers the amendment gave cities or took from the state broadly.

Nonetheless, Ohio newspaper reports and editorials have interpretive value. Many newspapers supported the amendment, apparently to great effect. On September 3, 1912, Ohio voters approved municipal home rule with 58 percent of the vote and a margin of over 86,000 votes.⁹² Leading up to the vote, Ohio newspaper reports shaped public awareness of the amendment through advocacy during the convention, descriptions of liquor intrigues, and coverage at the close of the campaign.⁹³

determining the meaning of the home rule amendment.”); Sponholtz, *supra* note 52, at 163 (noting Fesler’s role).

90. This Article largely pulls from the *Columbus Dispatch* archives. At that time, the *Columbus Evening Dispatch* (now the *Columbus Dispatch*) regularly shared editorials written by other Ohio newspapers. These pieces are particularly helpful because they presumably circulated in multiple media markets, reaching wider audiences. *See, e.g.*, sources cited *infra* notes 94–101.
91. *See generally* *Yellow Journalism*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/yellow-journalism> [https://perma.cc/A752-SUT6] (last updated Sept. 26, 2022).
92. Sponholtz, *supra* note 52, at 244–45 tbl.1. Curiously, at 58 percent, home rule sat almost exactly in the middle in terms of support. The lowest amendment was for women’s suffrage, failing with 43 percent of the vote. *Id.* The highest amendment was for liability for stockholders, passing with 71 percent of the vote. *Id.*
93. As noted, no known newspaper directly addressed the precise meaning of “general laws.” For the purposes of this Article, the analysis of Ohio papers only presents clues and context, from which assumptions can be drawn and conclusions made. Reasonable minds can certainly disagree concerning the conclusions made here. This Article’s goal is to present the full range of evidence, both the helpful and potentially unhelpful, to readers for their consideration.

A. During the Convention, Newspapers Advocated for the Home Rule Amendment, Focusing Coverage on City Empowerment

The press followed the convention proposals and debates as they occurred, advocating for the home rule amendment's approval by delegates. Each piece below arguably impacted how the public understood the amendment, some more than others.

A *Toledo Blade* editorial supported the home rule proposal because it enabled cities to choose their own form of government and act without asking Columbus for permission first.⁹⁴ The *Blade* lamented that, due to uniformity requirements, the fight for a city to better itself required “having to fight every municipality in the state which d[id] not feel the need of betterments and [was] against change.”⁹⁵ Further, the *Blade* expressed concern that existing Ohio law placed the “true seat of municipal government at Columbus.”⁹⁶ An average reader may have believed that home rule empowered cities to act without state preapproval. Another takeaway might be that home rule would remove state political influence from city operations.

Around this same time, the *Dayton Herald* also advocated for the home rule amendment.⁹⁷ The *Herald* pushed for cities to have the right to set their own system of government to tackle their own unique problems.⁹⁸ Targeting the requirement of uniformity, the paper complained about the existing state-mandated form of government for all cities over 5,000 people, such that Cincinnati, Dayton, Hamilton, Middletown, and Miamisburg all had the same structure.⁹⁹ Instead, the *Herald* advocated for the home rule amendment so municipalities could have “the liberty of fixing [their] own form of local self-government and then enforcing it.”¹⁰⁰ An average reader may have thought that the home rule provision's primary objective (or perhaps only objective) was to allow cities to choose their own system of governance. While the editorial attacked uniformity of state law, readers were left without any idea of what powers the state retained under the amendment.

94. *Near Home Rule*, *supra* note 81, at 4 (publishing an editorial by the *Toledo Blade*).

95. *Id.*

96. *Id.*

97. *Home Rule for Cities*, COLUMBUS EVENING DISPATCH, Feb. 16, 1912, at 4 (publishing an editorial from the *Dayton Herald*).

98. *Id.*

99. *Id.*

100. *Id.*

The *Cleveland Plain Dealer* weighed in as well, supporting the proposal.¹⁰¹ The *Plain Dealer* offered a clean and simple explanation of what the home rule amendment would accomplish, closely following the views expressed by delegate Knight.¹⁰² The paper reiterated that the current constitution prevented a city from doing anything not expressly authorized by the state.¹⁰³ Next, it noted the home rule amendment would reverse this presumption, “permitting cities to do anything in way of self-government not definitively forbidden by law. Home rule means self-government.”¹⁰⁴ While never using the term, the editorial may nonetheless have impacted how the public understood the term “general laws.” An average reader would have thought that a city could do anything not barred by the legislature, meaning that “general laws” only referred to something the legislature had “forbidden by law.”¹⁰⁵

The *Cincinnati Enquirer* also attempted to explain the proposal to the public.¹⁰⁶ Under the banner “People Must Decide,” the paper reported “[i]n a word, municipalities may do whatsoever they wish in the matter of governing themselves so long as what they do is not forbidden by the state.”¹⁰⁷ It further elaborated on the battle between dry and wet interests over the language, but described the debate as “in reality academical.”¹⁰⁸ Much like the *Plain Dealer* reader, a reader of this report would think that the amendment still allowed the state to forbid municipal actions as it saw fit.

Although no known paper explicitly defined “general law,” their advocacy offers helpful clues. Reports focused primarily on what municipalities could do, not on what the state could no longer do. Presented in simple terms, the average reader might have believed home rule gave to the city while not taking from the state.

B. The Press Also Covered the Liquor Debate as It Related to the Home Rule Amendment, but the Reporting May Be of Limited Help

Outside of outright advocacy, papers also covered the liquor intrigues of the convention and their influence on the home rule amendment. However, as will be discussed, the interpretive value of this debate may be limited. On March 16, 1912, the *Cincinnati Enquirer*

101. *Home Rule for Cities*, COLUMBUS EVENING DISPATCH, Apr. 25, 1912, at 4 [hereinafter *Home Rule for Cities*] (publishing an editorial from the *Cleveland Plain Dealer*).

102. *Id.* See generally DEBATES, *supra* note 61, at 1433.

103. *Home Rule for Cities*, *supra* note 101.

104. *Id.*

105. *Id.*

106. *Self-Rule*, CIN. ENQUIRER, May 1, 1912, at 20.

107. *Id.*

108. *Id.*

raised the alarm about brewing tension between dry and wet interests on the question of liquor.¹⁰⁹ Sure enough, on April 28, 1912, the *Columbus Evening Dispatch* reported that Wayne Wheeler of the Anti-Saloon League had raised concerns that the home rule amendment would weaken the state's ability to enact liquor laws.¹¹⁰ At that time, the amendment still included the phrase "general laws affecting the welfare of the state as a whole."¹¹¹ Dry interests worried the language would allow cities to circumvent the dry counties in which they sat.¹¹² Wheeler sent letters to delegates warning that cities might be able to flout liquor laws and "regulate their saloons practically as they see fit."¹¹³ Although the *Dispatch* noted disagreements with this interpretation, the report likely still had an influence on public perception. An average reader may have understood that dry interests had concerns that municipalities would be able to ignore laws passed by the General Assembly. Of course, not long after, the language of the amendment changed.¹¹⁴

Days later, the *Columbus Evening Dispatch* elaborated on the removal of the clause "affecting the welfare of the state as a whole." On April 30, 1912, the paper reported that delegates had become concerned that the home rule amendment, as proposed, gave too much authority to municipalities.¹¹⁵ The paper stated that, likely stirred by Wheeler's efforts, opponents worried cities would be able to invalidate dry counties, although the paper also reported that supporters of the amendment disputed this reading.¹¹⁶ In addition, on a separate page,

109. *Single Tax*, CIN. ENQUIRER, Mar. 16, 1912, at 2.

110. *Home Rule as Now Proposed Menace to Dry Interests*, COLUMBUS SUNDAY DISPATCH, Apr. 28, 1912, at 15 [hereinafter *Menace to Dry Interests*]. Founded in Oberlin, Ohio in 1893 and later headquartered in Westerville, Ohio, the Anti-Saloon League was a powerful force in national and Ohio politics dedicated to advancing the prohibition of alcohol. *Anti-Saloon League*, OHIO ST. UNIV. COLL. ARTS & SCI.: TEMPERANCE & PROHIBITION, <https://prohibition.osu.edu/anti-saloon-league> [https://perma.cc/M7LZ-Q6X2] (last visited Sept. 12, 2022).

111. *Home Rule Issue Is Overshadowed by Liquor Bugaboo*, COLUMBUS EVENING DISPATCH, Apr. 30, 1912, at 5 [hereinafter *Home Rule Issue Is Overshadowed*]; *Menace to Dry Interests*, *supra* note 110.

112. *Menace to Dry Interests*, *supra* note 110. Because state law enabled counties to disallow alcohol (e.g., the "local option"), dry interests feared this language would allow cities to flout county alcohol laws. As individual counties chose to be dry, these prohibitions applied in a patchwork fashion, not to the state as a whole. *Id.*

113. *Id.*

114. *See supra* Part II.B.1.

115. *See generally Home Rule Proves an Eye Opener to Con-Con Delegates*, COLUMBUS EVENING DISPATCH, Apr. 30, 1912, at 7.

116. *Id.*

the paper reported on the removal of the words “affecting the welfare of the state as a whole,” and further noted that home rule advocates lamented the emasculating effect of this change.¹¹⁷ The alleged aim of the removal was to eliminate any ghost of the liquor issue to placate dry interests.¹¹⁸ A reader reviewing this article might have taken away that, under the amended proposal, municipalities would be unable to contravene state laws. Reading that delegates had “narrowed the general powers sought to be given municipalities to a sweeping extent,”¹¹⁹ the public likely thought that the home rule amendment left the state full power to preempt municipal acts.

But the interpretive plot thickened the following day, May 1, 1912, when the *Dispatch* reported a grave dry blunder. Fearing any residual effect of the liquor issue, dry interests pushed to amend the proposal again.¹²⁰ But this time, delegate Knight cleverly influenced the proposal and gave municipalities far more freedom of action.¹²¹ Under the banner “Cities Are Given Unlimited Power of Government,” the *Dispatch* reported, “[I]f the proposal is ratified by the people [as is], Ohio cities will have greater local powers than those of any other state in the union, with the exception possibly of California.”¹²² At this point, a public reader may have received something of a shock, perhaps now led to believe the amendment would break a city free from state control. A closer look, however, reveals that this report concerned section 7, which enables a municipality to exercise self-government.¹²³ The provision containing the general laws limitation exists under section 3.¹²⁴ In any event, this alteration remained in the proposal through ratification.

The cumulative effect of the liquor intrigue can be debated but may offer little insight in the end. On the one hand, the ideological battle between dries and wets drew broad interest in the state generally.¹²⁵ The Anti-Saloon League had recently flexed its muscles in 1906 by helping to elect Ohio Governor John M. Pattison, and the League’s national

117. *Home Rule Issue Is Overshadowed*, *supra* note 111.

118. *Id.* Of course, this account does not quite line up with the reasoning delegates gave at the time. *See supra* Part II.B.1.

119. *Home Rule Issue Is Overshadowed*, *supra* note 111.

120. *Cities Are Given Unlimited Power of Government*, COLUMBUS EVENING DISPATCH, May 1, 1912, at 7 [hereinafter *Cities Are Given*].

121. *Id.*

122. *Id.*

123. *Id.*; OHIO CONST. art. XVIII, § 7.

124. OHIO CONST. art. XVIII, § 3.

125. Sponholtz, *supra* note 52, at 60.

publishing house operated out of Westerville, Ohio.¹²⁶ Temperance sentiment ran deep in Ohio, and readers sympathetic to the dry movement perhaps internalized restrictive views of home rule. But on the other hand, it is unclear if views on temperance affected *how* voters understood home rule, not just whether they supported it. Conceptually, a dry who supported home rule may have believed that the state retained power to enforce liquor laws, while a wet who supported home rule may have felt that municipalities could choose to be wet. Ultimately, the liquor debate may not be particularly instructive to show how the public understood the amendment.

*C. Newspapers Covered the Campaign for Ratification,
Offering Both Positive and Negative Pieces*

After the close of the convention, newspapers covered the campaign to ratify the home rule amendment, which included publishing opinion pieces both for and against ratification. However, like any campaign, these advocates and opponents tended toward hyperbole and spin, and so analysts should review these writings with a critical eye.

On August 15, 1912, the *Columbus Evening Dispatch* published a letter to the editor from Olin J. Ross that rebuked the home rule amendment and encouraged the public to vote against it.¹²⁷ His primary concern boiled down to that of Madisonian faction and cities being ruled “by organized gangs of scoundrels.”¹²⁸ Notably, he warned “when the power of the state is removed, then the cities can run wild.”¹²⁹ Finally, he suggested the home rule amendment was nothing more than a cover to advance wet interests, hoping to flout state liquor restrictions.¹³⁰ While clearly suggesting that the home rule amendment may allow cities to ignore state law, it is unclear what persuasive effect a letter to the editor from a private citizen might have had. Moreover, readers

126. *Ohio Anti-Saloon League*, OHIO HIST. CONNECTION, https://ohiohistorycentral.org/w/Ohio_Anti-Saloon_League [https://perma.cc/2V2F-JDK6] (last visited Sept. 13, 2022). This website contains a typo. Voters elected Governor Pattison in 1906, not 1909. *Gov. John M. Pattison*, NAT’L GOVERNORS ASS’N, <https://www.nga.org/governor/john-m-pattison/> [https://perma.cc/S6N7-3WUY] (last visited Dec. 10, 2022).

127. Olin J. Ross, Letter to the Editor, *Municipal Home Rule*, COLUMBUS EVENING DISPATCH, Aug. 15, 1912, at 4 [hereinafter Ross, *Municipal Home Rule*]. Olin Ross was an attorney and author. See OLIN J. ROSS, *THE SKY BLUE: A TALE OF THE IRON HORSE AND OF THE COMING CIVILIZATION 1* (1904).

128. Ross, *Municipal Home Rule*, *supra* note 127, at 4; see also THE FEDERALIST NO. 10, at 44–45 (James Madison) (P.F. Collier & Son ed., 1901).

129. Ross, *Municipal Home Rule*, *supra* note 127, at 4 (internal quotations omitted).

130. *Id.*

may have questioned its hyperbolic tone. Nonetheless, Ross's letter did (erroneously) project to the public that the amendment would remove any state check on cities.

Four days later on August 19, 1912, the *Toledo Blade* penned another editorial on home rule, again supporting the amendment.¹³¹ Unlike Ross's assessment of city domination, the *Blade* offered a more restrained understanding of the proposal.¹³² It explained that under the amendment, city power would be "properly restricted, properly held in leash, but yet a quite adequate and sufficient home-rule."¹³³ A reader likely would have understood that cities would not wield unchecked power, but instead would remain "in leash" of the state.

By August 21, 1912, the *Columbus Evening Dispatch* attempted to set the record straight that cities would remain subordinate under the amendment.¹³⁴ The editorial began by acknowledging the attack that home rule would "permit cities to set up a government of their own by nullifying state laws."¹³⁵ Then, it pushed back: "That is quite misleading. . . . It is true that the powers of the city are enlarged, but the state does not surrender its ultimate authority."¹³⁶ The *Dispatch* even included the entire text of the section 3 proposal, including the term "not in conflict with general laws."¹³⁷ As a result, this editorial offers compelling insight into how a reader would have understood the proposal. The paper acknowledged the argument that the amendment gave cities unchecked power, presented the language as it would appear on the ballot, and then refuted that cities could nullify state law. Taken together, readers would be left with the belief that general laws were nothing more than statewide laws, and that cities had no power to flout them.

On August 26, 1912, the *Cincinnati Enquirer* published a letter to the editor from W.J. Hays, warning voters to reject the "misleading" home rule amendment.¹³⁸ Hays accused the convention delegates of

131. *Remember Home Rule*, COLUMBUS EVENING DISPATCH, Aug. 19, 1912, at 4 [hereinafter *Remember Home Rule*] (publishing an editorial by the *Toledo Blade*).

132. *Compare id.*, with Ross, *Municipal Home Rule*, *supra* note 127, at 4.

133. *Remember Home Rule*, *supra* note 131, at 4.

134. *Municipal Home Rule*, COLUMBUS EVENING DISPATCH, Aug. 21, 1912, at 4.

135. *Id.*

136. *Id.*

137. *Id.*

138. W.J. Hays, *A Timely Warning*, CIN. ENQUIRER, Aug. 26, 1912, at 6. The author cannot find definitive evidence of who W.J. Hays was, but the same name appears in an Ohio Secretary of State's 1921 Annual Report as the designee to receive service for a Davenport, Iowa corporation. HARVEY C. SMITH, SEC'Y OF STATE, ANNUAL REPORT OF THE SECRETARY

intentionally rushing the proposal to voters so that they would not understand its impact.¹³⁹ While Hays denounced home rule by name, he directed the bulk of his wrath toward the initiative and referendum amendments,¹⁴⁰ and so the interpretive value of this piece is low.

Just before the vote on September 1, 1912, the *Cincinnati Enquirer* ran an unattributed advertisement deriding the amendments and calling for a no vote on all, including home rule.¹⁴¹ Attacking home rule from the perspective of employers, it warned that the amendment would enable cities “to engage in any business or occupation they s[aw] fit” which would “authorize[] public monopoly of any and all occupations, destroying all opportunity for private industry in such lines.” Near the end of the plea to employers, the advertisement stated in bold text that home rule was “Socialism, pure and simple.”¹⁴² While certainly implying the state would lose oversight of cities as they carried out their “socialist” aims, this over-the-top advertisement is hyperbolic throughout, and so its impact on voters is doubtful.

Finally, around this same time, papers noted many progressives who campaigned in support of the proposal. Those reported include Newton Baker, Mayor of Cleveland,¹⁴³ the Political Science Club at the Ohio State University,¹⁴⁴ then gubernatorial candidate and future governor James Cox,¹⁴⁵ Brand Whitlock, Mayor of Toledo,¹⁴⁶ and

OF STATE TO THE GOVERNOR AND GENERAL ASSEMBLY OF THE STATE OF OHIO FOR THE YEAR ENDING JUNE 30, 1921, 130–31 (1921).

139. Hays, *supra* note 138, at 6.

140. *Id.*

141. *When in Doubt, Vote No!*, CIN. ENQUIRER, Sept. 1, 1912, at 24 [hereinafter *When in Doubt*]. This ad appears to have run in multiple papers across the state and was likely the anonymous work of Allen R. Foote and the Ohio State Board of Commerce. *See* Warner, *supra* note 54, at 28 & nn.29–30 (noting that the same message appeared in the *Cleveland Leader* on September 1, 1912). As the campaign came to a close, the organization attempted to push these anonymous advertisements on newspapers statewide, but many editors refused to publish them. *Id.* at 27–28.

142. *When in Doubt, supra* note 141, at 24 (emphasis omitted). The advertisement pulled no punches: “If you do understand [the amendments] you know most of them to be dangerous, full of double meanings affording opportunities for vicious and class legislation . . .” *Id.*

143. *Expect Large Crowd Wednesday Evening*, COLUMBUS EVENING DISPATCH, Aug. 21, 1912, at 3.

144. *University Club Approves All but Five Amendments*, COLUMBUS SUNDAY DISPATCH, Aug. 25, 1912, at 1.

145. *Tireless Effort Has Won Success for “Jimmie” Cox*, COLUMBUS SUNDAY DISPATCH, Aug. 25, 1912, at 152.

146. *Brand Whitlock Makes Plea for Equal Suffrage*, COLUMBUS EVENING DISPATCH, Sept. 1, 1912, at 6.

influential progressive minister Dr. Washington Gladden.¹⁴⁷ To dispel any doubt about the amendment’s affiliation, Mayor Baker announced “[t]he home rule proposal is in definite line with the entire progressive movement.”¹⁴⁸ The endorsements of so many progressive leaders likely swayed the manner in which the public understood the proposal.

IV. THE ORIGINAL UNDERSTANDING OF HOME RULE CAN BE DECIPHERED AND APPLIED TO MODERN INTERPRETIVE CHALLENGES

By analyzing the available information, it can be determined that the ratifying public understood the home rule amendment to still allow the state to preempt city ordinances with laws applying uniformly statewide. This conclusion matches that of Justice DeWine’s dissent in *Dayton*. Part IV.A below attempts to synthesize the evidence so far described and offer helpful takeaways for future discussion. Part IV.B shows how this understanding could be adopted and employed in home rule controversies like *Dayton*.

A. As Justice DeWine Articulated, the State Maintained Its Preemptive Power Under the Original Understanding of the Home Rule Amendment

Justice DeWine was correct when he argued that the original understanding of the amendment left the state fully able to preempt city ordinances with general laws of uniform applicability. As Justice DeWine discussed, dictionaries and caselaw support a simple and expansive understanding of “general laws.” But as this Article articulated, the evidence does not end there.

Delegates themselves understood that the amendment did not meaningfully detract from state power, and they likely conveyed this belief to the general public. Delegate Knight’s presentation could hardly have been more explicit—the state retained its power with respect to general affairs.¹⁴⁹ The home rule amendment granted flexibility to municipalities by reversing the presumption against local power.¹⁵⁰ But the General Assembly retained the ability to preempt municipalities as it saw fit.¹⁵¹ And because the state remained dominant, the only plausible understanding of “general laws” could be state laws affecting the entire state. Any more restrictive a reading would contradict the testimony of the convention. Indeed, delegates found such a concept so

147. *Dr. Gladden Favors New Liquor License Plans*, COLUMBUS EVENING DISPATCH, Aug. 26, 1912, at 3.

148. *Mayor Baker to Lead Fight for “Free City,”* CLEV. LEADER, July 13, 1912, at 2.

149. DEBATES, *supra* note 61, at 1433.

150. *See supra* Part II.B.2.

151. *See id.*

obvious that the clause “affecting the welfare of the state as a whole” was deemed entirely redundant and superfluous to “general laws.”¹⁵² From the vantage point of delegates, “general laws” contained no hidden or specialized meaning, and indeed it was not even a term worth debating.¹⁵³ After the convention concluded and delegates returned home, this message would have been shared with the voters.

Moreover, the press bolstered this plain reading of “general laws.” Newspapers by and large presented the amendment in terms of what it added to cities, not what it took from the state. Advocates of the amendment frequently attempted to temper the public’s understanding of the proposal.¹⁵⁴ They emphasized the power the state retained and pushed back against detractors who charged that the proposal would allow a city to nullify state laws.¹⁵⁵ The public would have read these pieces and understood that, under the amendment, the state’s power would remain as a check on municipal power.

While some reporting advanced the view that the amendment would limit state power, these pieces do not overcome stronger evidence to the contrary. To be sure, the May 1, 1912, headline “Cities Are Given Unlimited Power of Government”¹⁵⁶ and the September 1, 1912, “home rule is socialism” advertisement¹⁵⁷ would have implied to a reasonable reader that the state would lose oversight and preemptive authority under the amendment. But this understanding was almost certainly rebutted by other pieces. For example, perhaps no press clip deserves more weight than that in the *Columbus Evening Dispatch* on August 21, 1912.¹⁵⁸ Not only did this article come out two weeks before the vote, but it also directly addressed and answered these attacks.¹⁵⁹ Moreover, it included the exact words of section 3 of the amendment, including the term “general laws,” alongside this explanation.¹⁶⁰ Next, no reason exists to think a reader would believe the May 1 article over the August 21 editorial as both appeared in the *Columbus Evening Dispatch*. Finally, the August 21 editorial comes across as far more evenhanded and believable than the over-the-top September 1 advertisement and

152. *See supra* Part II.B.1.

153. *See id.*

154. *Remember Home Rule*, *supra* note 131, at 4.

155. *Municipal Home Rule*, *supra* note 134, at 4.

156. *Cities Are Given*, *supra* note 120, at 7. The changed section being discussed in this Article does not include the term general laws, and so has some lesser value in this inquiry. *Id.*

157. *When in Doubt*, *supra* note 141, at 24.

158. *Municipal Home Rule*, *supra* note 134, at 4.

159. *Id.*

160. *Id.*

its parade of horrors. Between these conflicting reports, analysts should draw more interpretive guidance from the August 21 editorial.

Finally, while clearly influential to the amendment, the liquor debate offers limited interpretive help.¹⁶¹ Despite its undeniable influence in 1912, the liquor controversy tells analysts little about *how* the public would have understood the text and impact of the amendment. Future courts and litigants should not focus too closely on these deliberations.¹⁶²

Combined, the historical evidence supports Justice DeWine's conclusion. After examining the convention transcripts and newspapers, it appears clear that the public would have believed that the term "general laws" allowed the state to keep its power of preemption over local governments.

*B. The Original Understanding of the Amendment
Can Be Employed to Solve Complex Controversies*

Many of the complex issues surrounding home rule become easy to solve by employing the original understanding of "general laws." The Ohio Supreme Court has long struggled to implement a predictable test for what a general law is under the home rule amendment.¹⁶³ Unfortunately, the *Canton* test appears to have been a step in the wrong direction.¹⁶⁴

Returning to *Dayton v. State*, the original understanding of "general laws" appears to be in conflict with the Ohio Supreme Court's modern home rule jurisprudence. In *Dayton*, a majority found that the state failed to show that the law in question was a general law.¹⁶⁵ Relying on two different prongs of the test, the split majority agreed that the city prevailed because the state statute did not put forth affirmative police regulations and did not "prescribe a rule of conduct upon the citizens

161. *See supra* Part III.B.

162. Reasonable minds can disagree about the relevance of the liquor debate. For example, perhaps the convention debate to change the language was mere pretext concealing liquor motives. But this is not entirely clear, as Edward Doty led the charge to change the language of the amendment, yet he represented wet and progressive Cuyahoga County. Then again, perhaps Doty privately worried language hostile to dry interests would face a harder time being ratified. *See* Sponholtz, *supra* note 52, at 52, 167. This ambiguity is the reason the discussion is included here, even though this Article ultimately finds it is not on point.

163. *See supra* Introduction.

164. *Id.*

165. *City of Dayton v. State*, 2017-Ohio-6909, ¶ 34, 87 N.E.3d 176, 188–89 (Ohio 2017).

generally.”¹⁶⁶ Defending the *Canton* test, the majority explained the seeming inconsistencies in past jurisprudence as due to the factual differences between the cases.¹⁶⁷ However, none of these justifications finds support in the original understanding of the amendment. No original evidence supports the notion that state preemption hinges on the state setting forth affirmative regulations. Further, the general laws upheld by the court prior to the home rule amendment’s passage had specifically targeted local officials, not all citizens generally.¹⁶⁸ Finally, the term “general laws” never presented a fact-sensitive analysis. Instead, it was always a simple term of art stemming from Ohio constitutional law, able to be understood by an ordinary Ohioan. For better or worse, the *Dayton* majority and the *Canton* test appear dissonant with the original understanding of the home rule amendment.

On the other hand, Justice DeWine’s dissent finds reinforcement after a deeper dive into original understanding. While Justice DeWine brought forward strong evidence from dictionaries, existing caselaw, and some quotes from the convention, a more thorough examination offers more support for his position. As applied to *Dayton v. State*, this original understanding of “general laws” would allow the state to preempt Dayton’s ordinance because the state statute applied to the entire jurisdiction of Ohio and uniformly to all municipalities. It would be irrelevant that the statute only applied to municipalities. It would be irrelevant if the state’s motivation had Dayton in mind. And it would be irrelevant if the topic concerned an ostensibly “local” issue. While Dayton would have the right to implement traffic cameras, the state would have the right to preempt such an ordinance. This simple understanding of “general laws” would create predictability in cases such as this where the state and locality conflict.

CONCLUSION

The Ohio Constitution’s grant of home rule to municipalities has presented a challenging puzzle for Ohio courts. What exactly constitutes a general law continues to be subject to extensive debate. But by looking to the original understanding of the term, the ambiguity falls away. Following Justice DeWine’s *Dayton* dissent and the common tools used to find public understanding, it is clear the Ohio public originally thought the amendment would maintain state preemptive oversight over local governments. If the Ohio Supreme Court ever steps away from the *Canton* test, this original understanding should become the law.

166. *Id.* ¶ 27, 87 N.E.3d at 185; *Id.* ¶¶ 41, 46, 87 N.E.3d at 188–89 (French, J., concurring) (citing *City of Canton v. State*, 2002-Ohio-2005, ¶ 21, 766 N.E.2d 963, 968 (Ohio 2002)).

167. *Id.* at 2017-Ohio-6909 ¶ 32, 87 N.E.3d at 186.

168. *See State ex rel. Guilbert v. Yates*, 64 N.E. 570, 571 (Ohio 1902).