

OHIO MUNICIPAL LEAGUE OPPOSITION TO H.B. 201

My name is Garry Hunter, General Counsel for the Ohio Municipal League. I am here today to speak against H.B. 201. If enacted this bill would violate Ohio's Home Rule Constitution Article XVIII.

H.B. 201 Section 4933.41 states that "every person seeking to obtain distribution service or retain natural gas service has the right to obtain any available distribution service or retain natural gas service from a natural gas company. . ." However, section (B) limits this right by PUCO regulations and tariffs and subject to municipal home rule rights of Sections 4 and 6 of Article XVIII, Ohio Constitution. Section 4933.41 (C) then takes away municipal home rule by precluding municipal regulation of gas usage. The net effect of the proposed statute is a citizen only has the right to utility natural gas usage under state regulations but not under municipal regulations. Ohio Constitution Article XVIII Section 3 grants municipal corporations the right to exercise police powers concurrently with the state so long as the exercise of the local police power does not conflict with the state's exercise of its police powers.

The State police power as used here is the right to use natural gas subject to state PUCO regulations and tariffs. Section (C) of 4933.41 prohibits municipal corporations from promulgating any building code or similar requirements that limits the use of residential, commercial or industrial consumers within their boundaries from obtaining natural gas service. Building Codes or similar requirements are not in conflict with PUCO

regulations and tariffs. Hence the municipal exercise of its police powers does not conflict with the state's exercise of its police powers.

The utilization of natural gas within a municipality is not the same in every municipality. For instance, some municipalities may have readily available alternative sources of energy which are cost effective, while others may not. This means the regulation of gas emissions are different for each municipality. This is a classic home rule issue.

The enactment of Ohio Constitution Article XVIII envisions a system of dual sovereigns—the state and local government. The only difference between the dual sovereign's argument of Ohio Attorney General Yost in his March 17, 2021 filing in Federal Court against the U.S. Secretary of Treasury is that there the State of Ohio is arguing that the Federal Government is making a state sovereign decision in violation of the Tenth Amendment.¹ I believe this legislation violates the Home Rule provisions of the Ohio Constitution and should not be adopted.

Thank you for your time and I urge your opposition to this bill. I am happy to answer any questions you may have.

¹ State of Ohio v. Janet Yellen, Secretary of Treasury, Case No. 1:21-cv-181 (Fed.Dist.Ct., So. Dist., 2021)