

WISCONSIN SUPREME COURT
WEDNESDAY, FEBRUARY 24, 2016
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed a Milwaukee County Circuit Court decision, Judge Paul V. Van Grunsven presiding.

2014AP400

[Milwaukee Police Association v. City of Milwaukee](#)

In this case, the Supreme Court reviews whether the Home Rule Amendment of the Wisconsin Constitution, Wis. Const. Art. XI, § 3(1), trumps the Wisconsin Legislature's enactment of § 66.0502, which restricts municipalities from imposing residency restrictions on their employees.

Some background: In 2013, the Wisconsin Legislature passed a law that restricts cities, villages, towns, counties and school districts from "requir[ing], as a condition of employment, that any employee or prospective employee reside within any jurisdictional limit." Wis. Stat. § 66.0502(3)(a).

The statute, entitled "Employee Residency Requirements Prohibited," provides, with some exceptions for police and fire personnel to live within 15 miles, no local governmental unit may require, as a condition of employment, that any employee or prospective employee reside within any jurisdictional limit.

After the law took effect, the Milwaukee Common Council promptly enacted a charter ordinance asserting that the new statute violates Milwaukee's constitutional home-rule authority under Wis. Const. art. XI, § 3(1), and ordering the continued enforcement of Milwaukee's local residency rule.

The city of Milwaukee enacted its residency Charter Ordinance more than 75 years ago, predicated on the home rule amendment, which differentiates it from Wisconsin municipalities that derive authority for such ordinances from statutory home rule. The ordinance requires all employees of the city of Milwaukee to establish and maintain their actual bona fide residences within the boundaries of the city or be terminated.

Representatives of the Milwaukee Firefighters and the Milwaukee Police Association brought a declaratory judgment that the state statute preempts the city ordinance. The city responded that the ordinance controls, due to the Home Rule Amendment.

The circuit court ruled that § 66.0502 preempts the city's ordinance. The circuit court ruled that residency requirements are of both state and local concern, but that state interests were paramount based on how the "test of paramountcy" had been applied in previous cases.

The circuit court held that even if the case primarily involved a matter of local affairs, "the City would still be bound by the statute since it satisfies the uniformity requirement." The circuit court reasoned that "[t]he legislature did not enact a statute which could only apply to the City of Milwaukee" but "[r]ather, all cities, villages, and towns are prohibited from requiring their employees to reside within the jurisdictional boundaries."

The Court of Appeals reversed, ruling that the residency ordinance can be enforced. It concluded that: (1) § 66.0502 does *not* involve a matter of statewide concern and does *not* affect all local governmental units uniformly, so it does not trump the Milwaukee ordinance; and (2) § 66.0502 does not create a protectable liberty interest. The court also affirmed the circuit court's

ruling that the city did not violate the constitutional rights of any member of the Police Association.

The Court of Appeals reasoned that “Wis. Stat. § 66.0502 directly affects the city’s economy and tax base, which numerous courts have recognized is a local concern.” The Court of Appeals also held that Wis. Stat. § 66.0502 did not meet the uniformity test because “it will have an outside impact on the City of Milwaukee,” and “undoubtedly interferes with the ability of many municipalities-including the City of Milwaukee to promptly respond to emergencies.”

The Court of Appeals did not strike down § 66.0502, holding instead that it “does not apply to the City of Milwaukee.”

The Wisconsin Supreme Court recently clarified the legal analysis for analyzing a state law under the Home Rule Amendment in Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337. When examining a Home Rule question, the court performs a two-step analysis. First, as a threshold matter, the court determines whether the statute concerns a matter of primarily statewide or primarily local concern. If the statute concerns a matter of primarily statewide interest, the home rule amendment is not implicated and our analysis ends. If, however, the statute concerns a matter of primarily local affairs, the reviewing court then examines whether the statute satisfies the uniformity requirement. If the statute does not, it violates the home rule amendment.

In taking the case to the Supreme Court, the petitioners maintain that § 66.0502 is primarily a matter of statewide, not local, concern. They argue that because § 66.0502 applies, on its face, to every city, village, town and county, uniform application is plain. The petitioners assert that in Van Gilder v. City of Madison, 222 Wis. 58, 267 N.W. 25 (1936), this Court recognized that differences in the way a statute may “*impact*” or “*effect*” municipalities is not determinative; indeed they claim it is irrelevant.

The Wisconsin Institute of Law & Liberty, which filed an amicus brief, observes that other cities and villages could pass a similar charter ordinance exempting themselves from the statute. The state Department of Justice contends in its amicus brief that the Court of Appeals incorrectly focused exclusively on the effects the law would have on Milwaukee, and failed to acknowledge statewide interests recognized by this Court.

The city maintains that the Court of Appeals’ analysis comports with Madison Teachers. Specifically, they argue that the Court of Appeals properly followed the two-part test set forth in Madison Teachers, tracking the language of the Home Rule Amendment: first, a determination whether a local or statewide public concern is involved and, second, a determination as to uniformity.

A decision in this case could determine whether the Home Rule Amendment of the Wisconsin Constitution trumps the Wisconsin Legislature’s enactment of § 66.0502.