

In the
Supreme Court of Ohio

CITY OF COLUMBUS, et al.,	:	Case No. 2025-1057
	:	
Plaintiffs-Appellees,	:	On Appeal from the Franklin County
	:	Court of Appeals,
v.	:	Tenth Appellate District
	:	
STATE OF OHIO,	:	Court of Appeals
	:	Case No. 24AP-333
Defendant-Appellant.	:	

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
STATEMENT OF THE CASE AND FACTS.....	2
I. Ohio’s municipalities have long regulated tobacco and alternative nicotine products to address their own local concerns, and in some instances, they have led the State toward imposing similar regulations statewide	2
II. After the Cities began regulating flavored-tobacco products locally, the General Assembly passed R.C. 9.681 to bar all local regulations of tobacco and alternative-nicotine products	6
III. The Cities successfully challenge R.C. 9.681 under the Ohio Constitution	8
A. The Franklin County Common Pleas Court concludes that R.C. 9.681 violates the Home Rule Amendment and permanently enjoins its enforcement against The Cities	8
B. The Tenth District Court of Appeals affirms, and this Court accepts review.....	9
ARGUMENT.....	11
Cities’ Response to State’s Propositions of Law No. 2	11
I. <i>Canton</i> faithfully follows a century of this Court’s holdings that the Home Rule Amendment has altered the balance of power between the State and municipalities and the General Assembly lacks the constitutional authority to pass laws prohibiting municipal regulation.....	11
II. R.C. 9.681 is unconstitutional under <i>Canton</i> because it operates as a limitation upon municipal legislation and does not prescribe a general rule of conduct upon the population of the state.....	14
A. R.C. 9.681 purports only to limit all municipal legislative power over tobacco and alternative nicotine products, including to pass legislation mirroring state law....	18
B. R.C. 9.681 also does not prescribe a rule of conduct upon citizens generally.....	20

Cities’ Response to State’s Propositions of Law No. 121

 I. Stare decisis controls the State’s first proposition of law..... 21

 II. R.C. 9.681 unconstitutionally restricts municipal regulation in violation of Article XVIII, Section 3 as originally understood.....23

 A. “General laws,” as used in Article XVIII, Section 3, would have been understood to mean state laws operating uniformly and setting forth the police power.....24

 B. This meaning is embodied in this Court’s earliest precedents.....20

 C. This meaning is consistent with both the purpose and history fo the Home Rule Amendment.....33

 1. Prior to 1912, Ohio’s Constitutions allowed the General Assembly to directly run Ohio’s cities.....34

 2. The 1912 Constitutional Convention gave Ohio the Progressive Constitution on which its progressive delegates campaigned.....38

 i. The delegates at the convention were clear that the intent of the Home Rule Amendment was to prohibit the State from merely banning municipal regulation of a subject matter.....38

 ii. The organized campaign against Ballot Proposal 40—Article XVIII of the Constitution—also recognized that the Amendment removed some sovereign power from the State.....44

CONCLUSION 47

CERTIFICATE OF SERVICE.....53

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Auxter v. Toledo</i> , 173 Ohio St. 444 (1962).....	12
<i>Biden v. Nebraska</i> , 600 U.S. 477 (2023).....	24
<i>Centerville v. Knab</i> , 2020-Ohio-5219.....	23, 33
<i>Cincinnati Bell Tel. Co. v. Cincinnati</i> , 81 Ohio St.3d 559 (1998).....	27
<i>Canton v. State</i> , 2002-Ohio-2005.....	10, 11
<i>Clark v. Snapper Power Equip., Inc.</i> , 21 Ohio St.3d 58 (1986).....	21
<i>Cleveland v. Raffa</i> , 13 Ohio St.2d 112 (1968).....	27
<i>Cleveland v. State</i> , 2010-Ohio-6318.....	10
<i>Cleveland v. State</i> , 2014-Ohio-86.....	10, 19
<i>Columbus v. Molt</i> , 36 Ohio St.2d 94 (1973).....	33
<i>Columbus v. State</i> , 2025-Ohio-2408 (10th Dist.).....	6
<i>D.A.B.E., Inc. v. Toledo-Lucas Cty. Br. of Health</i> , 2002-Ohio-4172.....	28
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	23

<i>Fitzgerald v. Cleveland</i> , 88 Ohio St. 338 (1913).....	21, 30, 33
<i>Fremont v. Keating</i> , 96 Ohio St. 468 (1917).....	13, 21, 32, 33
<i>Froelich v. Cleveland</i> , 99 Ohio St. 376 (1919).....	28, 30
<i>Gabbard v. Madison Local School Dist. Bd. of Edn.</i> , 2021-Ohio-2067	24
<i>Greenburg v. Cleveland</i> , 98 Ohio St. 282 (1918).....	33
<i>League of Women Voters of Ohio v. Ohio Redistricting Comm.</i> , 2022-Ohio-65	28
<i>Learning Resources, Inc. v. Trump</i> , 607 U.S. ___, 2026 U.S. LEXIS 714 (2026)	24
<i>Linndale v. State</i> , 85 Ohio St.3d 52 (1999).....	20
<i>Maggiore v. Kovach</i> , 2004-Ohio-722	28
<i>Mendenhall v. Akron</i> , 2008-Ohio-270	20
<i>Miami Cty. v. Dayton</i> , 92 Ohio St. 215 (1915).....	25
<i>New York Trust Co. v. Commr. of Internal Revenue</i> , 68 F.2d 19 (2d Cir. 1933).....	24
<i>Newburgh Hts. v. State</i> , 2022-Ohio-1642	23
<i>Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted</i> , 65 Ohio St.3d 242 (1992).....	12
<i>Pfeifer v. Graves</i> , 88 Ohio St. 473 (1913).....	23

<i>Schneiderman v. Sesanstein</i> , 121 Ohio St. 80 (1929).....	13
<i>Springfield v. State</i> , 2017-Ohio-8954.....	19
<i>State ex rel. Cincinnati Enquirer v. Bloom</i> , 2024-Ohio-5029.....	23
<i>State ex rel. Gatehouse Media Ohio Holdings II Inc. v. Columbus Police Dept.</i> , Slip Opinion No. 2025-Ohio-5243	23
<i>State ex rel. Swetland v. Kinney</i> , 69 Ohio St.2d 567 (1982).....	33
<i>State ex rel. Yost. v. Central Tobacco and Stuff, Inc.</i> , Case No. 2025-1510 (S.Ct.).....	16
<i>State v. Gonzales</i> , 2017-Ohio-777	28
<i>State v. Jackson</i> , 2004-Ohio-3206.....	23
<i>State v. Williams</i> , 2024-Ohio-1433	21
<i>State v. Wyant</i> , 68 Ohio St.3d 162 (1994).....	28
<i>Struthers v. Sokol</i> , 108 Ohio St. 263 (1923).....	26, 33
<i>W. Jefferson v. Robinson</i> , 1 Ohio St.2d 113 (1965).....	12
<i>Wayt v. DHSC, Inc.</i> , 2018-Ohio-4822.....	22
<i>Webster v. Reproductive Health Servs.</i> , 492 U.S. 490 (1989).....	21
<i>Youngstown v. Evans</i> , 121 Ohio St. 342 (1929).....	13, 31, 33

Constitutional Provisions

Ohio Const. (1851), art. XIII, § 6 35

Ohio Const., art. I, § 2..... 12

Ohio Const., art. XVIII, § 3passim

Ohio Const., art. XVIII, § 12.....27

Ohio Const., art. XVIII, § 13.....27, 28

Statutes

R.C. 9.681..... passim

R.C. 4921.25 19

G.C. 3628..... 13, 32

G.C. 6307.....13, 14

Legislative Enactments

2022 H.J.R. No. 4.....22

Other Authorities

1 *Ohio Convention Debates* (1851) 35

10/28/2025 Case Announcements, 2025-Ohio-4853 8

2022 Official Election Results,
<https://www.ohiosos.gov/elections/election-results-and-data/2022-official-election-results/>
(accessed Mar. 9, 2026) 22

Amendments to the Constitution of Ohio Proposed by the Constitutional Convention (1912)41

Bigelow,
New Constitution for Ohio (1912) 40

Black’s Law Dictionary (2d Ed. 1910) 25

Cushman,
Voting Organic Laws, 28 *Political Science Q.* 207 (1913)..... 36, 44

Express und Westbote (Aug. 19, 1912).....41

Goodnow, <i>Municipal Powers in Ohio’s Proposed Constitution</i> , N.Y. Times (Aug. 25, 1912).....	45
Gotherman, <i>Municipal Home Rule in Ohio Since 1960</i> , 33 Ohio St.L.J. 589 (1972)	34
<i>Issue 2: Proposed Constitutional Amendment to Prohibit Local Government from Allowing Non-Electors to Vote</i> , available https://www.ohiosos.gov/globalassets/ballotboard/2022/2022-11_issue2_certifiedballotlanguage.pdf (accessed Mar. 9, 2026)	22
Mallison, <i>General Versus Special Statutes in Ohio</i> , 11 Ohio St.L.J. 462 (1950).....	34, 36
<i>Merriam-Webster Online Dictionary</i> , https://www.merriam-webster.com/dictionary/in%20conflict (accessed Mar. 9, 2026).....	26
Niles, <i>Toledo bans indoor smoke</i> (July 15, 2003), https://bgfalconmedia.com/135172/news/bg-news/toledo-bans-indoor-smoke/ (accessed Mar. 9, 2026).....	2
Ohio Constitutional Revision Commission (OCRC), <i>Recommendations for Amendments to the Ohio Constitution: Final Report, Index to Proceedings, and Research</i> (1977).....	34
<i>Ohio Legislative History: 1909-1913</i> (1913).....	42, 43
<i>Proceedings and Debates of the Constitutional Convention of the State of Ohio</i> (1912)	passim
<i>Proposed Amendments to the Constitution of Ohio to be Adopted or Rejected</i> (1912).....	44
Scalia & Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012)	24, 25
<i>State Issue 4: Full Text</i> , https://www.ohiosos.gov/elections/election-results-and-data/2006-elections-results/state-issue-4-november-7-2006/state-issue-4-full-text/ (accessed Mar. 9, 2026)	3
<i>State Issue 4: November 7, 2006</i> , https://www.ohiosos.gov/elections/election-results-and-data/2006-elections-results/state-issue-4-november-7-2006/ (accessed Mar. 9, 2026)	3

<i>State Issue 5: Certified Ballot Language</i> , https://www.ohiosos.gov/elections/election-results-and-data/2006-elections-results/state-issue-5-november-7-2006/state-issue-5-certified-ballot-language/ (accessed Mar. 9, 2026)	3
<i>State Issue 5: November 7, 2006</i> , https://www.ohiosos.gov/elections/election-results-and-data/2006-elections-results/state-issue-5-november-7-2006/ (accessed Mar. 9, 2026)	3
Steinglass & Scarselli, <i>The Ohio State Constitution</i> (2d Ed. 2022).....	34, 36
Tägliches Cincinnati Volksblatt (Aug. 17, 1912).....	41
The Celina Democrat (Aug 9, 1912), available at https://www.loc.gov/resource/sn88077067/1912-08-09/ed-1/?sp=12&st=image (accessed Mar. 8, 2026)	41
<i>The Century Dictionary and Cyclopedia</i>	26
The Clinton Republican (Aug. 8, 1912), available at https://ohiomemory.org/digital/collection/p16007coll112/id/4926 (accessed Mar. 8, 2026)	41
The Daily Journal-Herald (Aug. 10, 1912), available at https://ohiomemory.org/digital/collection/p16007coll56/id/50181 (accessed Mar. 8, 2026)	41
The Democratic Banner (Aug. 9, 1912), available at https://www.loc.gov/resource/sn88078751/1912-08-09/ed-1/?sp=12&st=image&r=-0.567,0.102,2.134,1.022,0 (accessed Mar. 8, 2026).....	41
The Free Press-Standard (Aug. 8, 1912), available at https://ohiomemory.org/digital/collection/p16007coll134/id/1752/rec/3345 (accessed Mar. 8, 2026)	41
The Morrow County Republican (Aug. 9, 1912), available at https://ohiomemory.org/digital/collection/p16007coll55/id/1450 (accessed Mar. 8, 2026)	41
The News-Herald (Aug. 8, 1912), available at https://www.loc.gov/resource/sn85038161/1912-08-08/ed-1/?sp=12 (accessed Mar. 8, 2026).....	41
The Smoke-free Indoor Air Act of 2004, Columbus City Code Ch. 715 (2004)	2

Tung, Hendlin & Glantz, <i>Competing Initiatives: A New Tobacco Industry Strategy to Oppose Statewide Clean Indoor Air Ballot Measures</i> , 99 Am. J. Public Health, 430-439 (2009), available at https://pmc.ncbi.nlm.nih.gov/articles/PMC2642532/ (accessed Mar. 9, 2026).....	2
Vaubel, <i>Municipal Home Rule in Ohio</i> , 3 Ohio N.U.L.Rev. 1 (1975).....	31
Vaubel, <i>Municipal Home Rule in Ohio, Part III</i> , 3 Ohio N.U.L.Rev. 643 (1976).....	25
Walker, <i>Municipal Government in Ohio Before 1912</i> , 9 Ohio St.L.J. 1 (1948).....	35
Warner, <i>Ohio's Constitutional Convention of 1912</i> , 61 Ohio State Archeological and Historical Q. 11 (1952).....	37
<i>Webster's New International Dictionary of the English Language</i> (1911).....	26

INTRODUCTION

This case, in many ways, is a microcosm of the ethos surrounding the 1912 Constitutional Convention. It intersects with much of what the delegates—and, subsequently, the People of Ohio—hoped to achieve and with the problems they sought to overcome by amending the 1851 Ohio Constitution. It emerges out of a long history of local governments using their authority under the Ohio Constitution’s Home Rule Amendment to protect their residents from harms caused by tobacco products. That authority has been well-recognized for decades, even where local ordinances are, as they have often been, more stringent than state law.

First, some local governments believed that state law failed to adequately address indoor smoking. In response, using their constitutionally protected home rule authority, several municipalities passed comprehensive indoor smoking bans. Then, when the General Assembly failed to do the same, electors used their constitutionally protected initiative process to pass an initiated ordinance banning indoor smoking in workplaces and bars statewide. Later, after concluding that State law did not go far enough to address youth access to tobacco, several municipalities—again exercising their constitutionally protected right to home rule—increased the minimum age to purchase tobacco from 18 to 21 within their corporate limits. Only after did the State follow their lead to impose the same requirement statewide. More recently, after noticing that state law failed to adequately curb the use of favored tobacco and vaping products, which are too often in the hands of Ohio’s youngest, several Ohio municipalities again acted to bar the sale of those products. However, this time, the General Assembly asserted – contrary to the 1912 Home Rule Amendment and decades of experience and precedent – that local governments had no role to play in the regulation of tobacco products. In doing so, the General Assembly succumbed to

the very interests that the 1912 delegates understood were improperly interfering in the ability of the people and their local governments to respond to conditions that needed to be fixed.

In so doing, the General Assembly passed R.C. 9.681. R.C. 9.681 is an unconstitutional assault on home rule and the authority granted to municipalities by the Ohio Constitution to address their own particular concerns. This Court should affirm the decision of the Tenth District and find R.C. 9.681 unconstitutionally interferes with the rights of cities to exercise home rule authority.

STATEMENT OF THE CASE AND FACTS

I. Ohio’s municipalities have long regulated tobacco and alternative nicotine products to address their own local concerns, and in some instances, they have led the State toward imposing similar regulations statewide.

Cities have been at the forefront of regulating tobacco usage in Ohio. Columbus passed an ordinance prohibiting smoking in all indoor workplaces in 2004. *See* The Smoke-free Indoor Air Act of 2004, Columbus City Code Ch. 715 (2004). The cities of Bowling Green and Toledo acted even before Columbus when they passed similar ordinances in 2001 and 2003, respectively. *See* Niles, *Toledo bans indoor smoke* (July 15, 2003), <https://bgfalconmedia.com/135172/news/bg-news/toledo-bans-indoor-smoke/> (accessed Mar. 9, 2026). These laws built upon decades of both State and local laws that took more gradual steps towards restricting indoor smoking as the harms of secondhand smoke become a greater concern.

In 2006, voters across Ohio faced competing smoking issues. State Issue 4, a proposal backed by the tobacco companies, bars, and restaurants would have added Article XV, Section 12 to the Ohio Constitution. *See* Tung, Hendlin & Glantz, *Competing Initiatives: A New Tobacco Industry Strategy to Oppose Statewide Clean Indoor Air Ballot Measures*, 99 Am. J. Public Health, 430-439 (2009), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC2642532/> (accessed Mar. 9, 2026). That amendment would have prohibited the General Assembly from passing an indoor

smoking ban for certain locations, including offices, bars, bingo halls, bowling alleys, and hotels. *State Issue 4: Full Text*, <https://www.ohiosos.gov/elections/election-results-and-data/2006-elections-results/state-issue-4-november-7-2006/state-issue-4-full-text/> (accessed Mar. 9, 2026). It would have also “supersede[d] and render[ed] invalid any ordinance or local law” doing the same and “prevent[ed] such laws or ordinances from taking effect in the future.” *Id.* State Issue 4 was defeated by a vote of 64 to 35 percent (losing by over 1,000,000 votes). *State Issue 4: November 7, 2006*, <https://www.ohiosos.gov/elections/election-results-and-data/2006-elections-results/state-issue-4-november-7-2006/> (accessed Mar. 9, 2026).

By contrast, State Issue 5 was a citizen-initiated law that became Chapter 3794 of the Ohio Revised Code. This law prohibits smoking in public places and places of employment, allows for the establishment of outdoor nonsmoking areas, requires the removal of ash trays from areas where smoking is prohibited, and provides for enforcement, including civil fines. *State Issue 5: Certified Ballot Language*, <https://www.ohiosos.gov/elections/election-results-and-data/2006-elections-results/state-issue-5-november-7-2006/state-issue-5-certified-ballot-language/> (accessed Mar. 9, 2026). Ohio voters adopted State Issue 5 on a vote of 58 to 41 percent (winning by approximately 900,000 votes). *State Issue 5: November 7, 2006*, <https://www.ohiosos.gov/elections/election-results-and-data/2006-elections-results/state-issue-5-november-7-2006/> (accessed Mar. 9, 2026).

Recognizing that more could be done to reduce youth tobacco use, beginning in 2015 several Plaintiffs-Appellees (hereinafter collectively referred to as “Cities”) worked on other legislative proposals to do just that. Thus, even though state law only prohibited tobacco sales to anyone under the age of 18, several Cities passed ordinances raising the minimum legal sales age to 21. The City of Upper Arlington did so in 2015 followed by Columbus (2016), Dublin (2017), Cincinnati (2018), and Worthington (2018). *See* Cities’ Trial Exs. B (Columbus Ordinance

Number 3156-2016, enacting Section 2329.14 of the Columbus City Codes); I (Cincinnati Ord. No. 363-2018, amending Section 609-3 of the Cincinnati Municipal Code); T (Dublin Ord. No. 24-17, amending Section 135.17 of the Dublin Codified Ordinances); EE (Upper Arlington Ord. No. 35-2015, enacting Section 547.03 of the Upper Arlington Codified Ordinances); JJ (Worthington Ord. No. 24-2018, enacting Section 765.07 of the Worthington Codified Ordinances). Only after these Cities enacted their Tobacco 21 laws did the State of Ohio finally did the same in 2019. *See* R.C. 2927.02, as amended by 2019 Am.Sub.H.B. No. 166.

This innovation continues today, particularly in the various ways Tobacco 21 is enforced. Like the State, North Ridgeville enforces its measure through the criminal law. *See id.* at Ex. BBB (Section 636.20 of the Codified Ordinances of the City of North Ridgeville). Other Cities issue fines and penalties in an administrative or civil scheme. *See, e.g., id.* at Exs. D (Sections 248.05 and .06 of the Columbus City Health Code); E (Section 837.04 and .09 of the Bexley Codified Ordinances); I (Sections 609-3 and -99 of the Cincinnati Municipal Code); U (Sections 737.03 and .11 of the Gahanna Codified Ordinances); GG (Section 741.04, .12, and .13 of the Whitehall Codified Ordinances); and ZZ (Sections 771.04 and 771.99 of the Kent Codified Ordinances). Some even maintain a hybrid system, using both. *See, e.g., id.* at T (Section 135.17 of the Dublin Codified Ordinances); Y and Z (e.g., Sections 537.16, 757.06, 757.08, and 757.99 of the Hilliard Codified Ordinances); AA and BB (e.g., Sections 537.16 and 744.07 of the Oxford Codified Ordinances); JJ through LL (e.g., Section 765.03, .05, and .06 of the Worthington Codified Ordinances).

But that is not the extent of regulation in these Cities. Some Cities maintain licensure requirements for their tobacco retailers, including in connection with their Tobacco 21 programs. *See, e.g., id.* at Exs. E (Chapter 837 of the Bexley Codified Ordinances); B through D (Section

715.03 of the Columbus City Codes and Chapter 248 of the Columbus City Health Codes); I (Chapter 609 of the Cincinnati Municipal Code); T (Sections 94.20 through 94.24 to the Dublin Code); U (Chapter 737 of the Gahanna Codified Ordinances); V (Chapter 523 of the Grandview Heights Codified Ordinances); Z (Chapter 757 of the Hilliard Codified Ordinances); ZZ and AAA (Chapter 771 of the Kent Codified Ordinances); AA and BB (Section 537.16 and Chapter 744 of the Oxford Codified Ordinances); DD (Chapter 723 of the Reynoldsburg Codified Ordinances); DDD (Chapter 1721 of the Springfield Codified Ordinances); GG (Chapter 741 of the Whitehall Codified Ordinances); JJ through LL (Chapter 765 of the Worthington Codified Ordinances). Toledo has a similar system for its convenience stores. *Id.* at HHH (Ord. No. 291-23, enacting Chapter 721 of the Toledo Municipal Code).

And beyond licensure, there are a myriad of other local laws on the Cities' books. For example, Toledo requires—via its zoning code—that its tobacco retailers set up shop at least 500 feet away from schools, day care centers, and other places where children are present. *Id.* at Ex. FFF (Ord. No. 170-04, enacting Part 11 of the Toledo Municipal Code). Cleveland, Upper Arlington, and Athens—among others—regulate tobacco use in their city parks and outdoor spaces. *Id.* at Exs. P (Section 235.01 of the Cleveland Codified Ordinances); FF (Section 543.02 of the Upper Arlington Codified Ordinances); TT (Section 9.15.02 and .03 of the Athens City Code). And, finally, Heath prohibits the marketing of vapes, electronic cigarettes, and other “electronic nicotine delivery systems” (or ENDS) that have not been authorized by the federal Food and Drug Administration. *Id.* at Ex. W (Section 521.17 of the Heath Codified Ordinances).

These Cities all recognize the overarching health dangers of tobacco products. They, and their residents, recognize how vital it is to set up a robust mechanism ready to tackle this deadly product and to do so in a way that best fits the needs of their own local communities.

II. After the Cities began regulating flavored-tobacco products locally, the General Assembly passed R.C. 9.681 to bar all local regulations of tobacco and alternative-nicotine products.

In 2019, middle and high school students from across the state self-reported “flavored tobacco” as their second most-frequently-used tobacco product. State’s Trial Ex. A (“Tobacco use highlights from the 2019 Ohio Youth Risk Behavior/Youth Tobacco Survey”). Yet, there is little regulation of flavor additives under the state law, as a general matter, and no direct regulation on the sale of products containing them. *See* State’s Br. at 4 (Internal citations omitted.).

Concluding that the State has failed to protect kids from tobacco, several Cities have stepped in to fill that regulatory gap through their local laws. Specifically, Columbus, Grandview Heights, Toledo, and Worthington passed ordinances that do just that. *See* Cities’ Trial Exs. C and D (Section 715.05 of the Columbus City Codes and Section 248.05 of the Columbus City Health Code); V (Section 523.10 of the Grandview Heights Codified Ordinances); LL (Section 765.07 of the Worthington Codified Ordinances). *See also* Section 537.28 of Toledo Municipal Code.

On December 12, 2022, Columbus City Council voted to prohibit the sale of flavored tobacco products within its corporate limits. *See Columbus v. State*, 2025-Ohio-2408, ¶ 3 (10th Dist.) (hereinafter “App.Op.”). And two days later, the Ohio Senate introduced the first iteration of R.C. 9.681 as an amendment to Substitute House Bill Number 513. *Id.* at ¶ 4. The provision swiftly passed both chambers that day, but it was later vetoed by Governor DeWine. *Id.* The governor expressed his belief that the law would negatively impact Ohio’s young people. *Id.*

Instead of trying to override the veto, the General Assembly resurrected R.C. 9.681 in the State’s biennial “Christmas tree” budget bill, Amended Substitute House Bill Number 33. *Id.* Governor DeWine yet again vetoed it recognizing that “local government bans” on flavored

tobacco “are essential” to advancing public health across the State, particularly because, there is an “absence of an effective and comprehensive statewide flavored tobacco ban.” *Id.* at ¶ 1.

This time, however, the legislature voted to override his veto—and did so just weeks after Columbus’s flavored-tobacco law had taken effect. *Id.* at ¶ 4. R.C. 9.681 was thus set to take effect statewide on or after April 23, 2024.

In pertinent part, R.C. 9.681 provides:

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, including, without limitation, by . . . [s]etting or imposing standards, requirements, taxes, fees, assessments, or charges of any kind regarding tobacco products or alternative nicotine products that are the same as or similar to, that conflict with, that are different from, or that are in addition to, any standard, requirement, tax, fee, assessment, or other charge established or authorized by state law[.]

Id. at (B)(1).

This law prohibits *any now-existing or future* local law or regulation about tobacco and alternative-nicotine products—including concerning their sale and use—even if that ordinance simply copies state law verbatim. This provision of state law is so overarching a municipality appears to violate it by simply passing a non-binding resolution urging Congress or the FDA to ban flavored tobacco and vaping products. And the intent of this broad language is made clearer later in the section: “By the enactment of this section, it is the intent of the General Assembly to preempt political subdivisions from the regulation of tobacco products and alternative nicotine products.” *Id.* at (D). The law even contains a bounty provision for enforcement purposes—that is, it requires “in addition to any other relief provided” that a trial court “award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, resolution, regulation, local law, or other action as being in conflict with this section.” *Id.* at (C). Thus, under

R.C. 9.681, if a municipality has an ordinance banning the sale of cigarettes to an individual under the age of 21, a plaintiff can successfully sue that municipality—and obtain damages and attorneys’ fees—even though that ordinance mirrors state law and does not prohibit anything new.

III. The Cities successfully challenge R.C. 9.681 under the Ohio Constitution.

To vindicate their authority to regulate tobacco and alternative nicotine products the Cities sued the State of Ohio and others in the Franklin County Common Pleas Court. App.Op. at ¶ 6. After a bench trial on the merits, the common pleas court agreed with the Cities. It concluded that R.C. 9.681 violates the Home Rule Amendment under this Court’s existing line of case law, and it granted the Cities their requested relief. *Id.* at ¶ 6-8. The State appealed to the Tenth District Court of Appeals, *id.* at ¶ 9, which affirmed, *id.* at ¶ 10-32, and the State appealed to this Court. *See 10/28/2025 Case Announcements, 2025-Ohio-4853.*

A. The Franklin County Common Pleas Court concludes that R.C. 9.681 violates the Home Rule Amendment and permanently enjoins its enforcement against the Cities.

On April 9, 2024, the Cities of Columbus, Bexley, Cincinnati, Cleveland, Dublin, Gahanna, Grandview Heights, Heath, Hilliard, Oxford, Reynoldsburg, Upper Arlington, Whitehall, and Worthington filed a complaint in the Franklin County Common Pleas Court against the State of Ohio, the Ohio Department of Health (“ODH”), and ODH Director Dr. Bruce Vanderhoff seeking declaratory and temporary, preliminary, and permanent injunctive relief to, among other things, prevent R.C. 9.681 from taking effect against them. *Id.* at ¶ 6.

On April 19th, the common pleas court granted the Cities’ request for a temporary restraining order and temporarily blocked the defendants from enforcing R.C. 9.681. *Id.* at ¶ 7. On May 9th, the Cities filed an amended complaint to add a new claim with respect to Columbus and several new plaintiffs: the Cities of Athens, Barberton, Kent, North Ridgeville, Oberlin,

Springfield, and Toledo. *See id.* at ¶ 6. The court set the matter for a hearing on the preliminary injunction consolidating it with a bench trial on the merits. *Id.* at ¶ 8.

At trial, the court denied the defendants' motions in limine and permitted witness testimony. App.Op. at ¶ 7-8. The Cities presented the testimony of four witnesses; the defendants presented no witnesses. *Id.* ¶ 8. Additionally, the Cities admitted several exhibits, and the defendants admitted one. Tr. at 93-95. The State failed to produce any testimony about reasons for passing its ban on municipal regulation. It even failed to call any tobacco or vape shop retailers to testify about any difficulty in complying with these ordinances.

At the close of trial, the common pleas court accepted the amended complaint, bringing the newly added plaintiffs into the lawsuit. Tr. at 95:24-96:11. The court dismissed ODH and Dr. Vanderhoff as parties, leaving the State of Ohio as the sole defendant. Tr. at 123:9-16. The court issued a verbal order, later memorialized in writing, granting declaratory and injunctive relief on their home-rule claims. Tr. at 97:14-123:1, 123:4-132:21; Order (May 23, 2024). The court declared "that R.C. 9.681 is 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." Order at 2. Accordingly, it issued a permanent injunction to block the State from enforcing the law against the Cities. *Id.* The State appealed to the Tenth District Court of Appeals. App.Op. at ¶ 9.

B. The Tenth District Court of Appeals affirms, and this Court accepts review.

The Tenth District affirmed the judgment of the common pleas court. *Id.* at ¶ 32. The appellate court held that, under this Court's existing precedents, R.C. 9.681 is not a "general law" under Article XVIII, Section 3 of the Ohio Constitution. *Id.* at ¶ 18-25. Specifically, the court recognized that "R.C. 9.681 enacts no substantive regulation of tobacco" and, "[c]onsidered on its

own merits” violates both the third and fourth prongs of this Court’s general-law test as articulated in *Canton v. State*, 2002-Ohio-2005. *Id.* at ¶ 19-21. In addition, it recognized that R.C. 9.681 is “unambiguous” in language and intent. *Id.* at ¶ 23. Thus, it concluded that the tools of statutory construction—such as the *in pari materia* doctrine—were unnecessary, and altogether disallowed “by the fundamental limits of judicial power,” when interpreting R.C. 9.681. *Id.* at ¶ 22-25. In reaching this conclusion, the Tenth District recognized this Court’s own shift away from the application of that doctrine in its more recent home-rule jurisprudence. *Id.*, citing among others *Dayton v. State*, 2017-Ohio-6909 (plurality opinion); *Cleveland v. State*, 2014-Ohio-86 (*Cleveland Towing*); and *Cleveland v. State*, 2010-Ohio-6318 (*Cleveland Firearms*).

But the Tenth District did not stop there. It also reviewed R.C. 9.681 against the text, history, and tradition of Article XVIII, Section 3. App.Op. at ¶ 27-29. In so doing, the court reached the same ultimate conclusion. It concluded that, at the time of the 1912 Constitutional Convention, “a general law” would have been thought to be a state law that (1) “operate[s] uniformly throughout the state” and (2) “exercise[s] the police, sanitary, or other like regulatory powers of the state.” *Id.* at ¶ 27, citing 2 *Proceedings and Debates of the Constitutional Convention of the State of Ohio*, at 1439, 1442, 1472 (1912) (“*Proceedings & Debates*”). The court recognized that R.C. 9.681 fails that standard because the law “regulates nothing” in furtherance of the police power under the second requirement. *Id.*

In sum, the Tenth District found R.C. 9.681 not only violates established precedent but also “contravenes the original intent of the Home Rule Amendment” as embodied through its text, history, and tradition. *Id.* Thus, the Tenth District affirmed the judgment of the Franklin County Common Pleas Court. *Id.* at ¶ 32. The State appealed, and this Court accepted review. *See 10/28/2025 Case Announcements*, 2025-Ohio-4853.

ARGUMENT

Canton properly follows a century of holdings finding that a legislative enactment that purports to strip the ability of a municipality to enact police regulations violates the Home Rule Amendment. Such a ruling is consistent with this Court’s longstanding precedent. It also correctly follows the language used in Article XVIII, Section 3 of the Ohio Constitution.

Further, the Tenth District’s decision rests squarely on a correct historical understanding of what the delegates to the 1912 Convention understood when using the term “general law.” This is clear when reviewing the Proceedings of the Convention itself, the words used both in Section 3 of Article XVIII as well as words used in Sections 12 and 13 of that same Article—provisions that specifically gave the General Assembly the ability to limit municipal regulations in areas such as taxes and debts. Finally, this interpretation is consistent with the arguments both supporters and opponents of home rule raised when communicating with the voters prior to the adoption of the 1912 amendments. For these reasons, this Court should affirm the decision of the Tenth District.

Cities’ Response to State’s Proposition of Law No. 2

Under this Court’s home-rule jurisprudence, established by more than 100 years of cases, R.C. 9.681—which regulates Ohio municipalities and not tobacco or alternative nicotine products—is not a “general law” under Article XVIII, Section 3. On the contrary, the law (1) purports only to limit legislative power of an Ohio municipality to set forth police regulations while failing to set forth police regulations of its own, and (2) fails to prescribe a rule of conduct upon citizens generally.

- I. *Canton* faithfully follows a century of this Court’s holdings that the Home Rule Amendment has altered the balance of power between the State and municipalities and the General Assembly lacks the constitutional authority to pass laws prohibiting municipal regulation.**

Canton followed this Court’s original home rule decisions, which held that a state law that merely prohibits municipal action violates Article XVIII, Section 3, of the Ohio Constitution—the Home Rule Amendment—because it is *not* a general law. *See generally Canton, 2002-Ohio-2005.*

The State characterizes this case as one in which the Cities are “seeking authority” to regulate tobacco and “run their own tobacco-sale licensing program.” State’s Br. at 4. This is incorrect. Ohio’s municipalities derive their authority to exercise “police, sanitary and other similar regulations” directly from the Home Rule Amendment of the Ohio Constitution and the will of the sovereign: the People of Ohio. Ohio Const., art. XVIII, § 3, and art. I, § 2; *W. Jefferson v. Robinson*, 1 Ohio St.2d 113 (1965).

Further, the State suggests—incorrectly—that *Canton* was the first time this Court held that the Home Rule Amendment prevented the General Assembly from passing a law that simply barred municipal regulation of a matter. That is false. Since the time of the Home Rule Amendment, this Court has found that the General Assembly lacks the constitutional authority to pass laws merely limiting municipal regulation. *Canton* placed roughly 100 years of this Court’s jurisprudence into a single paragraph for all to follow. *Canton* at ¶ 9.

Canton summed up the Home Rule Amendment and this Court’s precedent that a “state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of police power, rather than of local self-government, and (3) the statute is a general law.” *Id.*, citing *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*, 65 Ohio St.3d 242, 244-245 (1992), citing *Auxter v. Toledo*, 173 Ohio St. 444 (1962).

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, 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 ¶ 21. As the *Canton* Court clarified, the General Assembly cannot pass a law limiting municipal lawmaking, because such a provision *is not* a general law. “In 1929, [this Court] held that general laws are enacted by the General Assembly ‘to safeguard the peace, health, morals, and

safety, and to protect the property of the people of the state.’ ” *Id.* at ¶ 13, quoting *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 82-83 (1929).

That was as central to the holding in *Canton* as it was to the holding in *West Jefferson*. In that case, this Court again held that “the words ‘general laws’ as set forth in Section 3 of Article XVIII of the Ohio Constitution means statutes setting forth police, sanitary or similar regulations and not statutes which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations.” *W. Jefferson*, 1 Ohio St.2d at paragraph three of the syllabus. And *West Jefferson* faithfully set forth the holding of *Youngstown v. Evans*, 121 Ohio St. 342 (1929), where this Court found that the General Assembly could not pass a law limiting the power of a municipality to simply enact police, sanitary, or other similar regulations. “Section 3628 is a general law in the limited sense that it operates uniformly throughout the state. *It is not a general law in the sense of prescribing a rule of conduct upon citizens generally. It is a limitation upon lawmaking municipal bodies.*” (Emphasis added.) *Id.* at 117. And, of course, *Youngstown* was drawn directly from *Fremont v. Keating*, 96 Ohio St. 468 (1917), where this Court stated that “[n]otwithstanding this right conferred upon municipalities by the constitution of Ohio, Section 6307, General Code, specifically provides that local authorities shall not regulate the speed of motor vehicles by ordinance, by-law, or resolution. It is sufficient to say that the [G]eneral [A]ssembly of Ohio cannot deprive a municipality of its constitutional rights. This section is clearly a violation of Section 3 of Article XVIII of the Constitution of Ohio, and void.” *Id.* at 470.

At bottom, it is not *Canton* the State is asking this Court to overturn, it is the sovereignty of the People of Ohio in adopting the Home Rule Amendment and the century worth of precedent upon which *Canton* rests. This Court should reject that invitation and refuse to engage in such

blatant acts of judicial activism. Because R.C. 9.681 is not a general law under this long-line of case law, it is unconstitutional. Rather, it violates both the third and fourth prongs of this well-established test. Thus, it is “ ‘an unconstitutional attempt to limit the legislative home-rule powers’ of municipalities.” *Dayton*, 2017-Ohio-6909, at ¶ 15 (lead opinion), quoting *Canton*, 2002-Ohio-2005, at ¶ 10.

II. R.C. 9.681 is unconstitutional under *Canton* because it operates as a limitation upon municipal legislation and does not prescribe a general rule of conduct upon the population of the state.

Applying the *Canton* analysis, R.C. 9.681 is unconstitutional. This Court’s decision in *Dayton* is instructive here. While that case garnered only a plurality as to the rationale, a majority of this Court agreed the laws at issue were not “general laws.” *See generally Dayton*, 2017-Ohio-6909, at ¶ 1-46 (lead and concurring opinions). While the concurring justices focused on the fourth *Canton* prong, and the leading justices focused on the third, they all agreed that to determine the legislative purpose under the third and fourth *Canton* prongs, the Court need look at each contested provision individually. *Id.* at ¶ 20 (lead opinion); *id.* at ¶ 46. And doing so wasn’t novel to this Court; instead, it was a return to form, in line with this Court’s earliest cases on the constitutional provision. *Fremont* at 469-470 (considering G.C. 6307 on its own accord under Article XVIII, Section 3).

In *Dayton*, the leading justices focused on the third prong and noted that that question “requires courts to consider whether the statute sets forth police regulations or whether it merely grants or limits municipalities’ legislative power to set forth police regulations.” *Dayton* at ¶ 16. But if the “statute serves an overriding state interest with respect to police, sanitary, or similar regulations, then the third prong of the *Canton* general-law test is satisfied, even if the statute limits the legislative authority of municipalities.” *Id.* at ¶ 20.

Here, there is simply no overriding state police, sanitary, or similar purpose for R.C. 9.681. Thus, the State cannot plausibly argue the law advances its ability to enforce tobacco control measures. Moreover, Cities have been at the forefront of regulating tobacco in Ohio. Before the state law prohibiting smoking in indoor workplaces, Columbus and other Cities here passed their smoke-free ordinances. Prior to the State passing a ban on sales of tobacco products to individuals under the age of 21, many of the Cities in this case already had such a prohibition. The State does not license retail tobacco shops. Cities in this litigation, however, do.

The state has no law on how close one tobacco or vape shop can be to another. Cities may not want an area of town overrun with vape shops, so some have passed ordinances to prevent that from happening. *See e.g.*, Cities' Trial Exs. U (Section 737.08(b) of the Gahanna Codified Ordinances; V (Section 523.10(h)(2) of the Grandview Heights Codified Ordinances); ZZ (Section 773.04 of the Kent Codified Ordinances).

Likewise, the State has a criminal prohibition against selling tobacco to anyone under the age of 21. But the State conducts roughly 2,000 undercover buys *across the entire State* in a single year to see if retailers are following that law. Many Cities engaged in this litigation believe that such a law, with criminal enforcement, while it is important, presents three separate problems. *First*, 2,000 undercover purchases across Ohio (a state with more than 11,000 tobacco retailers) are too remote and inefficient to ensure that local businesses are complying by not selling cigarettes to minors. *Second*, by mandating criminal enforcement instead of an administrative penalty scheme, it wastes very limited local police time and effort. These Cities believe that their police force time is better spent investigating and helping to prosecute violent crime instead of the sale of a pack of cigarettes to a 19-year-old. *Third*, and finally, the state criminal law is directed at the clerk who sells the tobacco product to the underage buyer. These Cities believe that the best way

to combat underage sales is to fine and potentially revoke the sales license of a shop that engages in improper sales. They understand that the business is more likely to comply with 21-year age limit if the store itself must pay a financial penalty than if an employee might face a misdemeanor criminal charge.

In addition, and of note, the City of Heath passed an ordinance prohibiting the sale of unauthorized e-cigarettes. This is the same type of conduct the State seeks to counter in another case now before this Court. The State’s enforcement action was taken *after* the Cities brought this case in the Franklin County Common Pleas Court.

Heath’s particular ordinance—which would be pre-empted if the State prevails—addresses the very harms the Attorney General has recently highlighted in this Court. The “types of illegal e-cigarettes at issue appeal to children, often serving as a gateway to a lifelong deadly habit. The State has a significant interest in protecting its most vulnerable from the unauthorized sale of potentially unsafe products.” (Memo in Support of Jurisdiction, *State ex rel. Yost v. Central Tobacco and Stuff, Inc.*, Case No. 2025-1510, at 4-5). These types of products “are the most used tobacco products among youth in the United States.” *Id.* at 7. The Attorney General claimed that, nationally, 5.9 percent of middle and high school students used e-cigarettes, with the vast majority choosing flavored e-cigarettes. *Id.* As bad as those numbers are nationally, the “statistics in Ohio are worse. The percentage of Ohio middle and high school students who have used e-cigarettes is double the national rate.” *Id.* These “illegal products” are “most likely to appeal to children” and they “are most likely to serve as a gateway to a lifetime of tobacco addiction.” *Id.* The Attorney General’s action, which involves only *three* vape shops, again highlights that there is no “overriding state purpose” in prohibiting local governments from addressing the same concerns. If the State is serious about addressing the harm it recognizes e-cigarettes pose, it cannot

simultaneously assert that it has an overriding interest in barring local governments from (and subjecting them to civil suits for) assisting it by addressing the same issue.

Similarly, many of the municipalities in this case prohibit smoking in certain outdoor public areas such as parks, swimming pools, and high school football stadiums. The State, however, has no laws covering such conduct. That means that without municipal action, sometimes from the laws a decade old, anyone would be allowed to smoke at a public park, a swimming pool, a high school football stadium, or in the middle the stands at a Columbus Clippers game. What is the state interest in that? There clearly is none, and the State can point to no legitimate interest in denying municipal action to address the same issue.

Further, the idea that retailers might have to deal with municipal regulations in each city is *not* an overriding state purpose. Retailers already deal with different municipal regulations in the various cities they seek to do business. For example, municipalities have different zoning codes and different requirements for the way a building looks. *See* Title 33 and 34 of the Columbus City Codes; Part 11 of the Hilliard Codified Ordinances; Part 11 of the Reynoldsburg Codified Ordinances; Part 11 of Bexley Codified Ordinances; Part 11 of the Gahanna Codified Ordinances; Ch. 153 of the Dublin Codified Ordinances; Part 11 of the Grandview Heights Codified Ordinances; Part 11 of the Upper Arlington Codified Ordinances; Part 11 of the Whitehall Codified Ordinances; Part 11 of the Worthington Codified Ordinances. *See also* Cities' Trial Ex. FFF (Ord. No. 170-04, enacting Part 11 of the Toledo Municipal Code, which specifically prohibits tobacco retail shops within 500 feet of schools, day care centers, and other places where children are present). And these same retailers have already dealt with situations where some of the same Cities in this case raised the purchase age to 21 before the State did so. They dealt with different rules in their stores in the past. There is no evidence to show that they cannot do so again.

Finally, a retailer’s convenience is not a reason to disregard a constitutional guarantee. The delegates to the 1912 convention were worried about the influences of power and money at the statehouse. That was the reason for writing the initiative and referendum, direct nomination through a party primary, and home rule into the Ohio Constitution. And it would be a perversion of the essence of home rule if power and money at the statehouse was all that was needed to bypass the Amendment. The Home Rule Amendment is no dead letter. And one final point: During oral argument in the Tenth District, the State admitted the only purpose of R.C. 9.681 is to regulate municipalities. Oral Argument at 15:00-15:30. In addition to establishing the absence of any overriding state interest, under the fourth prong of *Canton* that admission is fatal to the State’s defense, as noted below.

With no overruling state interest to save it, R.C. 9.681 fails under the third *Canton* prong. But even if it didn’t, it otherwise fails the fourth. Thus, it is not a general law under this Court’s existing precedent.

A. R.C. 9.681 purports only to limit all municipal legislative power over tobacco and alternative nicotine products, including to pass legislation mirroring state law.

R.C. 9.681 provides in pertinent part that “[n]o 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” *Id.* at (B). And such a “conflict” comes about through a local law that is “the same as or similar to, that conflict[s] with, that [is] different from, or that [is] in addition to, any standard, requirement, tax, fee, assessment, or other charge established or authorized by state law.” *Id.* at (B)(1). Likewise, division (D) provides that “[b]y the enactment of this section, it is the intent of the general assembly to preempt political subdivisions from the regulation of tobacco products and alternative nicotine products.”

This language fails to set forth any exercise of the State’s police power with respect to tobacco products or alternative nicotine products. Instead, it broadly prohibits municipal regulation. In fact, it is so broad that it precludes an Ohio municipality from regulating tobacco products and alternative nicotine products *in any way* at the local level. *See id.* (B)(1) (precluding local laws “that are the same as or similar to, that conflict with, that are different from, or that are in addition to” state laws). Put another way, a municipality would violate R.C. 9.681 by passing an ordinance that repeats state law verbatim.

Recent Supreme Court cases are instructive in this regard. *See Cleveland Towing*, 2014-Ohio-86; *Dayton*, 2017-Ohio-6909. *See also Springfield v. State*, 2017-Ohio-8954 (remanding the case to the trial court with the instruction to apply *Dayton*, showing *Dayton* as controlling precedent). And it was largely upon these recent cases that the trial court relied on to reach its judgment. Tr. at 128:7-23, relying on *Cleveland Towing* and *Dayton*.

In *Cleveland Towing*, the contested language provided that “[towing entities are] not subject to any ordinance, rule, or resolution of a municipal corporation, county, or township that provides for the licensing, registering, or regulation of entities that tow motor vehicles.’” (Alterations in original.) *Cleveland Towing* at ¶ 16, quoting R.C. 4921.25. Such language, as this Court concluded, “purport[s] to limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations.” *Id.* It further “fail[s] to set forth any police, sanitary, or similar regulations” in its own right. *Id.* Instead, such “broad language”—which precluded all municipal regulation of towing entities (e.g., in ways that would not otherwise be in conflict with an existing general law on the subject)—“directly contradicts” the Home Rule Amendment. *Id.* More specifically, the language violates the third *Canton* prong and was thus not a general law. *Id.* at ¶ 16-17. As a result, this Court severed it from the statute. *Id.* at ¶ 18-22.

B. R.C. 9.681 also does not prescribe a rule of conduct upon citizens generally.

R.C. 9.681 also violates the fourth prong of *Canton*. It “applies to municipal legislative bodies” and “not to citizens generally.” *Canton*, 2002-Ohio-2005, at ¶ 34-36. In *Canton*, this Court held that a statute “forbid[ing] political subdivisions from prohibiting or restricting the location of permanently sited manufactured homes in any zone or district in which a single-family home is permitted” was unconstitutional because it “applies to municipal legislative bodies, not to citizens generally.” *Id.* at ¶ 2, 36. This follows cases such as *Youngstown* and *Linndale v. State*, 85 Ohio St.3d 52 (1999).

The concurring justices in *Dayton*—in addition to *Linndale* and *Youngstown*—looked to *Mendenhall v. Akron*, 2008-Ohio-270, for support. *Dayton*, 2017-Ohio-6909, at ¶ 41-43 (French, J., concurring in judgment only). In *Mendenhall*, this Court held that the State’s speeding statute, which “plainly” demanded that “ ‘[n]o person shall operate a motor vehicle’ ” in a certain manner, set forth a rule of conduct on citizens generally. *Mendenhall* at ¶ 25. “By using the phrase ‘no person,’ [the statute] extends its application to the citizens of the state generally and does not single out any group or class for different treatment.” *Id.*

R.C. 9.681 violates the fourth prong of the *Canton* general law test because, under this Court’s precedents, it applies to municipal legislative bodies and not to citizens generally. It does not set forth a rule of conduct on persons. For example, unlike the statute at issue in *Mendenhall*, R.C. 9.681 plainly lacks the phrase “no person.” *See generally* R.C. 9.681. And while division (C) does speak of “any person,” that person is the party whom the State has allowed to sue municipalities for exercising their constitutional right to home rule. The law does not dictate or direct that person’s conduct, it bans municipal action.

Cities' Response to State's Proposition of Law No. 1

The People of Ohio who adopted Article XVIII, Section 3 for the first time would have understood the provision meant that only a state police-power regulation could prevail over a local police-power regulation. Because R.C. 9.681 is not a police-power regulation, it is not within the original meaning of the term “general law.” (Canton v. State, 2002-Ohio-2005, ¶ 21, affirmed; Fitzgerald v. Cleveland, 88 Ohio St. 338, 359 (1913), and Fremont v. Keating, 96 Ohio St. 468, 470 (1917), applied)

The State's first proposition must be rejected. Constitutional text, supported by history, and tradition of home rule support the view that a “general law” means a state law that sets forth a police, sanitary, or similar regulation for the general welfare of the State of Ohio. But this Court need not even reach the question, because stare decisis controls.

I. Stare decisis controls the State's first proposition of law.

Stare decisis controls this case. On that basis, the State's appeal should be rejected, and this Court should affirm the decision of the Tenth District. “ ‘It is the policy of courts to stand by precedent and not to disturb a point once settled.’ ” *Dayton*, 2017-Ohio-6909, at ¶ 30 (lead opinion), quoting *Clark v. Snapper Power Equip., Inc.*, 21 Ohio St.3d 58, 60 (1986). This doctrine “ ‘is a cornerstone of our legal system.’ ” *State v. Williams*, 2024-Ohio-1433, ¶ 17, quoting *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 518 (1989) (discussing in the context of statutory interpretation).

“While [this Court] ha[s] noted that the doctrine of stare decisis is less important in the constitutional context than in cases involving the common law or statutory interpretation,” it has also cautioned that it will “be careful to revisit settled precedent only when necessary.” (Internal citation omitted.) *Dayton* at ¶ 30. As Justice Fischer, writing for the leading justices in *Dayton* noted, “[D]uring the 15 years since the decision in *Canton* was announced . . . no justice has questioned the viability of the *Canton* test until now.” *Id.* at ¶ 31. And that lone dissenter in

Canton wrote later that “the *Canton* test is the law and has been relied upon by the majority in this case.” *Id.*

And Justice Fischer put forth an even finer point on why this Court should reject a request to overrule *Canton* here: “[T]he citizens of Ohio have not exercised their constitutional right to amend the language of the Home Rule Amendment considering *Canton* and its progeny. This provides additional support to the conclusion that there is no general belief that the *Canton* test should be altered.” *Id.* So too at present. The General Assembly is certainly aware of this Court’s *Canton* decision; yet it has not even proposed a constitutional amendment to Article XVIII, Section 3, considering this Court’s holding.

And it has had the opportunity to do so. In fact, it has gone to the electorate since *Dayton* and asked the People of Ohio to change the language of Section 3. This Court correctly presumes that the General Assembly has full knowledge of prior judicial decisions and could have drafted language in legislation to prevent the holding in future cases. *Wayt v. DHSC, Inc.*, 2018-Ohio-4822, ¶ 23. Since *Dayton*, the General Assembly proposed and the voters adopted a change to Article XVIII, Section 3. See 2022 H.J.R. No. 4. Known as State Issue 2, that amendment connected the provision to Article V, Section 1—the constitutional qualification on “[w]ho may vote.” *Issue 2: Proposed Constitutional Amendment to Prohibit Local Government from Allowing Non-Electors to Vote*, available https://www.ohiosos.gov/globalassets/ballotboard/2022/2022-11_issue2_certifiedballotlanguage.pdf (accessed Mar. 9, 2026). And the amendment passed on a vote of 76 to 23 percent. *2022 Official Election Results*, <https://www.ohiosos.gov/elections/election-results-and-data/2022-official-election-results/> (accessed Mar. 9, 2026).

Thus, the General Assembly was certainly aware of the *Canton* test when it proposed this amendment to Article XVIII, Section 3. Yet, it has made no change to the text of Section 3 relevant to that test, including by adding language to make clear the State could pass a law stripping municipalities of their authority to exercise police powers to address local concerns—the very authority authorized by the original and current text. Nor have the People themselves called for such a change. Thus, there remains today “no general belief that the *Canton* test should be altered.” *Dayton* at ¶ 31. *Stare decisis* should, therefore, command the outcome here.

II. R.C. 9.681 unconstitutionally restricts municipal regulation in violation of Article XVIII, Section 3 as originally understood.

“In interpreting the Ohio Constitution,” this Court “appl[ies] the original public meaning of a provision. *State ex rel. Gatehouse Media Ohio Holdings II Inc. v. Columbus Police Dept.*, Slip Opinion No. 2025-Ohio-5243, ¶ 17, citing *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶ 40. “The first consideration is always a provision’s text” because it is the Court’s “‘duty . . . to determine and give effect to the meaning expressed in its plain language.’ ” *Id.*, quoting *Newburgh Hts. v. State*, 2022-Ohio-1642, ¶ 17. Thus, this Court “‘consider[s] how the language would have been understood by the voters who adopted the amendment.’ ” *Id.*, quoting *Centerville v. Knab*, 2020-Ohio-5219, ¶ 22.

This Court “generally applies the same rules when constructing the Constitution as it does when it construes a statutory provision, beginning with the plain language of the text.” *Knab* at ¶ 22, citing *State v. Jackson*, 2004-Ohio-3206, ¶ 14. And, in so doing, it “‘consider[s] how the words and phrases would be understood by the voters in their normal and ordinary usage.’ ” *Id.*, citing *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008). Thus, “[g]enerally speaking, that means that [this Court] afford[s] a provision the meaning that would have been ascribed to it

by a competent speaker of the English language at the time of its adoption.” *Gatehouse Media* at ¶ 17, citing *Pfeifer v. Graves*, 88 Ohio St. 473, 487 (1913).

The State’s argument in this case focuses on two words—“general laws”—but it ignores the text as a whole. But, as Justice DeWine has stated, a reviewing court’s “goal in reading a text should be ‘to discern literal meaning in context’ and avoid a hyperliteral, ‘viperine’ construction that kills the text.’ ” *Gabbard v. Madison Local School Dist. Bd. of Edn.*, 2021-Ohio-2067, ¶ 95 (DeWine, J., dissenting), quoting Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 40 (2012). This concept—the “whole-text canon”—recognizes that by “zeroing in on each word in isolation, [the reviewing court] loses its grasp on the meaning of the provision as a whole.” *Id.*, citing *New York Trust Co. v. Commr. of Internal Revenue*, 68 F.2d 19, 20 (2d Cir. 1933). And more recently, Justice Barrett of the United States Supreme Court echoed similar concerns when she noted that “textualists—like all those who use language to communicate—do not interpret words in a vacuum.” *Learning Resources, Inc. v. Trump*, 607 U.S. ___, 2026 U.S. LEXIS 714, *101 (2026) (Barrett, J., concurring). Rather, they “use context, including ‘background legal conventions,’ ‘common sense,’ and ‘constitutional structure,’ to ascertain a text’s ‘most natural meaning.’ ” *Id.*, quoting *Biden v. Nebraska*, 600 U.S. 477, 509, 511-512, 515 (2023).

A. “General laws,” as used in Article XVIII, Section 3, would have been understood to mean state laws operating uniformly and setting forth the police power.

The Tenth District recognized that the term “general laws” as used in Article XVIII, Section 3 means those state laws that operate uniformly throughout the state and set forth the police power (as opposed to attempting to directly regulate municipalities). App.Op. at ¶ 27. And, up until now, the State attempted to justify R.C. 9.681 by claiming it set forth the police power. Now—perhaps wisely—the State has dropped that defense and admitted R.C. 9.681 fails to do so.

The delegates to the 1912 Constitutional Convention used the term “general law” in the Home Rule Amendment understanding and “intended[ing] to give municipalities ‘full police, sanitary and regulatory’ power so as to make [them] ‘as nearly autonomous locally as possible.’ ” Vaubel, *Municipal Home Rule in Ohio, Part III*, 3 Ohio N.U.L.Rev. 643, 651-652 (1976), citing 2 *Proceedings & Debates* at 1439 (Knight, G.W.). That is, delegates at the convention gave municipalities “ ‘all local police power’—‘police power that any political subdivision or the state as a unit can exercise.’ They were to ‘run their own government’ provided they did not interfere with general laws.” *Id.* at 652, citing 2 *Proceedings & Debates* at 1465 (Harris, G.W.; Anderson, D.F.). And the people themselves granted this sovereign power to municipalities. “This broad governmental power is considered to be an attribute of sovereignty, not surrendered by the states to the federal government. By virtue of the Home Rule Amendments, it is delegated by the people to the municipalities of the state.” *Id.*, citing *Miami Cty. v. Dayton*, 92 Ohio St. 215 (1915).

This, then, begs the question: What is a “general law?” That term was defined in 1912. *Black’s Law Dictionary* 701 (2d Ed. 1910) (defined under the term “Law”). A “general law” is “contradistinguished from one that is special or local, is a law that embraces a class of subjects or places, and does not omit any subject or place naturally belonging to such class. . . . A special law is one relating to particular persons or things; one made for individual cases or for particular places or districts; one operating upon a selected class, rather than the public generally.” *Id.*

Thus, as understood at that time, a law like R.C. 9.681 would not have been considered a “general law” but rather a “special law.” Stated a different way, a law passed by the General Assembly to prohibit municipal action would not qualify as a “general law,” because that law only operates on a selected class—municipalities—and does not on the public generally.

But that is not all. The *kinds* of “general laws” at issue in Article XVIII, Section 3 must also set forth the police power. That meaning is drawn from context. “The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” Scalia & Garner at 56.

Start, *first*, with the other clauses and words in Section 3, namely that it sets up a “conflict” analysis. Section 3 allows local laws so long as they are “not *in conflict with* general laws.” Ohio Const., art. XVIII, § 3. The idiomatic phrase “in conflict with” means “different in a way that prevents agreement.” *Merriam-Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/in%20conflict> (accessed Mar. 9, 2026).

A voter in 1912 might have thought the word “conflict” meant “ ‘[d]iscord of action, feeling or effect; antagonism, as of interests or principles; counteraction, as of causes, laws or agencies of any kind; opposing action or tendency; opposition; collision.’ ” *Struthers v. Sokol*, 108 Ohio St. 263, 268 (1923), quoting *The Century Dictionary and Cyclopedia*. See also 1 *Webster’s New International Dictionary of the English Language* (1911), available at <https://babel.hathitrust.org/cgi/pt?id=uc1.31210005953193&seq=566> (accessed Mar. 4, 2026) (“*Webster’s 1911 Dictionary*”) (Defined as “[a] strife for the mastery; hostile contest or encounter; a fight; a battle, esp. a prolonged contest; struggle; fighting,” “[c]ompetition or opposing action of incompatibles; antagonism, as of divergent interests, ideas, or acts,” or “[a] striking or dashing together; collision; violent meeting.”). He might have also thought the word, used in a legal sense in this scenario, meant something akin to a “conflict of laws.” *Webster’s 1911 Dictionary* (under “conflict”).

But a voter at the time would not have thought a “conflict” meant “abrogate,” “preclude,” or “preempt.” Those words all had defined meanings at the time. See *Webster’s 1911 Dictionary*.

Stated differently, a voter would not have understood the term “conflict” in Section 3 to allow a state law that “close[s] beforehand” or “puts an end to” local police-power regulations. *Id.* (“preclude” and “abrogate,” respectively). Instead, it would have been understood as to permit a “contest” or “battle” to see whether the local law yet prevailed—not that the battle was already won in favor of the State. And that battle or contest is centered on the exercise of the police power. As this Court would later put it, a “conflict” exists only where a local law setting forth the police-power “permits or licenses that which the statute forbids and prohibits, and vice versa” on the same. *Sokol* at paragraph two of the syllabus. That is, both the local and state laws in the analysis set forth the same power.

However, consider *second* Article XVIII, Section 3 in the context of all of Article XVIII. In addition to Section 3, the convention delegates also drafted and proposed Sections 11 and 12. Section 12 provides that the

[G]eneral [A]ssembly shall have authority to limit the power of municipalities to levy taxes and incur debts for local purposes and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

(Emphasis added.) 2 *Proceedings & Debates* at 1497. The convention also proposed Section 11, which provides that a municipality “may issue mortgage bonds . . . provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility” *Id.*

As these other provisions illustrate (later adopted as Article XVIII, Sections 12 and 13), when the delegates at the convention wanted to give the General Assembly the power to limit the authority of a municipality to pass legislation they did so explicitly. And this Court recognized

that the language used in Section 13 gives the General Assembly authority to pre-empt local laws. *See, e.g., Cleveland v. Raffa*, 13 Ohio St.2d 112 (1968); *Cincinnati Bell Tel. Co. v. Cincinnati*, 81 Ohio St.3d 559 (1998).

Moreover, if the term “general laws” in Section 3 simply means that the General Assembly can pass a law that prohibits municipal action concerning the police power, then the Home Rule protections of Section 3 are largely illusory and the language of Sections 12 and 13 is mere surplusage and completely unnecessary. “[E]very word in a statute [or constitutional provision] is designed to have *some* effect, and hence the rule that ‘in putting a construction upon any statute, every part shall be regarded, and it shall be so expounded, if practicable, as to give some effect to *every part of it*.’” (Emphasis in original.) (Cleaned up.) *State v. Gonzales*, 2017-Ohio-777, ¶ 50 (Kennedy, C.J., dissenting). “[W]ords in a statute do not exist in a vacuum.” *D.A.B.E., Inc. v. Toledo-Lucas Cty. Br. of Health*, 2002-Ohio-4172, ¶ 19.

Thus, when interpreting statutory or constitutional text, it is vital to remember that the use “of particular language in one part of a statute [or constitutional provision] but not in another part demonstrates that [the body] has chosen not to make that modification into the latter part of the statute [or constitutional provision].” *Gonzales* at ¶ 50, citing *Maggiore v. Kovach*, 2004-Ohio-722, ¶ 27. Constitutional text should never be read in a way that makes language unnecessary or superfluous. *See, e.g., League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-65, ¶ 293 (Fischer, J., dissenting), quoting *State v. Wyant*, 68 Ohio St.3d 162, 168 (1994) (Wright, J., dissenting), quoting *Froelich v. Cleveland*, 99 Ohio St. 376 (1919), paragraph one of the syllabus (“Under long standing case law, this court is not permitted to make constitutional language superfluous, because ‘[i]t is a basic rule of constitutional construction that ‘the whole section should be construed together, and *effect given to every part* and sentence.’” (Emphasis in

original.)). See also *League of Women Voters* at ¶ 216-228 (Kennedy, J., dissenting). By reading into Section 3 a power of the General Assembly to pass laws limiting the authority of municipal police powers, the State is disregarding the specific language of Article XVIII, Section 13.

And various delegates rejected the State’s argument here that the General Assembly can, despite the command of the Home Rule Amendment, pass a law prohibiting municipal action on a matter. One delegate stated,

The cities of the state have a right to home rule. We cannot solve their problems and they cannot solve ours, and we owe it to the toilers of the cities who are trying to work out their salvation to ignore the matter that has been injected here and exclude it from our consideration and give these people the right to home rule.... I say we have surely advanced enough in our civilization to give the cities a chance to work out their salvation. As one gentleman said, it is remarkable that the cities have done as well as they have. I want the time to come when the people of Cleveland and of Columbus and of Cincinnati, who know their own problems, can work them out themselves. I do not want their big businesses to be able to send lobbyists down here and work something through the legislature and tie their hands.

2 *Debates & Proceedings* at 1471 (Mr. Hurd).

Another argued that

[t]he advocates of home rule merely insist that municipalities be allowed to solve their own problems and control their own affairs, independent of outside authority, whether that authority be a monarchy, an oligarchy *or the people of a whole state*. In short, the cities merely ask that the principle of self-government be extended to them. At the present time they find themselves in the predicament of the women, the only other beings in the state denied the right to self-government.

(Emphasis added.) *Id.* at 1483 (Mr. Crosser).

As understood by these delegates, Article XVIII gave cities the right to home rule. And home rule meant that the General Assembly could not pass a law that simply “tied [the] hands” of Ohio’s municipalities. *Id.* at 1471. Instead, home rule meant a real conflict from a general law the General Assembly passed pursuant to the police power—a law that dealt with the peace, safety,

and health of the people of the State of Ohio, not one that merely serves as a legislative directive about topics upon which municipalities cannot legislate.

B. *This meaning is embodied in this Court's earliest precedents.*

Soon after the Home Rule Amendment was adopted by the People of Ohio, this Court recognized this meaning of the term consistent with the Cities' argument.

The general laws referred to are obviously such as relate to police, sanitary and other similar regulations, and which apply uniformly throughout the state. They involve the concern of the state for the peace, health and safety of all of its people, wholly separate and distinct from, and *without reference to, any of its political subdivisions*—such as regulate the morals of the people, the purity of their food, the protection of the streams, the safety of buildings and similar matters.

(Emphasis added.) *Fitzgerald v. Cleveland*, 88 Ohio St. 338, 359 (1913). The *Fitzgerald* Court noted that “the body adopting amendments, such as are here involved, will be presumed to have had in mind the course of legislation and existing statutes touching the subjects dealt with.” *Id.* The Court noted that the General Code at the time had “codifications . . . covering many years, including the last one adopted, . . . designated by it ‘*Police Regulations*,’ in which it has included the general laws of the character we have above described.” *Id.*

Just a few years later, this Court concluded that provisions of the General Code prohibiting the municipal regulation of certain traffic matters were unconstitutional under the newly-adopted amendment. *Froelich*, 99 Ohio St. at 376. The syllabus in that case recognized that the authority of a municipality to pass police and public-safety ordinances is “derive[d] . . . not by grant from the legislature, but under express authority from the people of the state given in the constitution.” *Id.* at paragraph two of the syllabus. This Court determined that “there is no express declaration in Section 3 of Article XVIII that the general laws referred to therein include the right to take out of the control of municipalities streets that have been laid off, constructed and improved by

them” *Id.* at 385. Instead, “general laws” refer to police, sanitary, and similar regulations.

Id. That is, this Court recognized,

They involve the concern of the state for the peace, health, morals and safety of all of its people, and the protection of their property and rights, wholly separate from and without reference to any of its political subdivisions; such laws for instance as regulate the morals of the people, the purity of their food, the protection of the streams, the protection of life and property, the safety of buildings, and similar matters. These matters are not local—they are general.

Id.

The Court found that the City of Cleveland could, under its home-rule authority, limit the weight of a truck on its streets to an amount less than the general state law even though state law contained a provision prohibiting municipalities from doing so. *Id.* “There was entire agreement in that case that by the municipal home-rule amendment the people made a new distribution of sovereign governmental power.” *Id.* at 389.

These decisions fit exactly within the intentions and understandings of the 1912 convention. As one prominent commentator on home-rule law has put it, “[T]he General Assembly does not have the authority to prevent the use of such power by municipalities.” Vaubel, *Municipal Home Rule in Ohio*, 3 Ohio N.U.L.Rev. 1, 78 (1975), citing 2 *Proceedings & Debates* at 1433. Thus, “state control over municipal actions in the area of police regulations is indirect, because the state can only prevent municipal regulation if the state itself regulates citizens and thereby supersedes any conflicting municipal measure.” *Id.* at 79.

Similarly, a decade after the Convention, this Court examined the effect of an old state law that purported to give municipalities the authority to pass misdemeanors but limited the punishment they could set. *See Youngstown*, 121 Ohio St. at 342. The cities of Cleveland and Youngstown both passed ordinances providing for greater punishment than the state law contemplated.

This Court noted that “Section 3628 is a general law in the limited sense that it operates uniformly throughout the state.” *Id.* at 345. But such determination was not sufficient to strip the municipalities of their constitutionally-protected rights. This Court emphasized that Section 3628 “*is not a general law in the sense of prescribing a rule of conduct upon citizens generally. It is a limitation upon law making by municipal legislative bodies.*” (Emphasis added.) *Id.* It went on to note that “[p]rior to the enactment of Sections 3 and 7 of Article XVIII of the Ohio Constitution in 1912, [Section 3628] was all-powerful and supreme in its regulation of municipal law making.” *Id.* But “[t]he amendments of 1912 necessarily operated as a repeal of any statutes then existing, in conflict therewith.” *Id.*

The Court then rejected the notion that the General Assembly could pass a law purporting to strip a municipality of the ability to legislate on matters on police or sanitary measures: “Let it be supposed that [Section 3628] provided for a complete prohibition upon municipal legislation. *Manifestly such a law would not be effective to take away the power conferred upon municipalities by the plain provisions of the Constitution.*” (Emphasis added.) *Id.* at 346. “Or let it be supposed that Section 3628 provided that municipalities should not impose any fine in excess of one dollar for violation of any police or sanitary ordinance, and that it prohibited punishment by imprisonment altogether. *No one would contend that such an indirect effort would be in any wise different in effect from a plain prohibition.*” (Emphasis added.) *Id.*, citing *Fremont*, 96 Ohio St. at 470.

And this was so clear that, even though this Court recognized that Section 3628 violated the constitutional right of a municipality to engage in home rule by passing police, sanitary, and health ordinances, it was not necessary to strike the law down as unconstitutional. “While Section 3628 is clearly in conflict with the Constitution, it [was] not necessary to declare the section

unconstitutional. Rather, the “controversy [could] be disposed of by a declaration that the constitutional provision is clear, and that it confers legislative power upon municipalities without any enabling legislation, and that therefore any legislation enacted either before or after the amendment of 1912 would be ineffective.” *Id.*, 121 Ohio St. at 346.

Thus, from the time of the Home Rule Amendment’s adoption, this Court has held the view that the meaning of “general laws” did not support a law that merely strips municipalities of the ability to legislate. *See, e.g., Fitzgerald*, 88 Ohio St. at 359; *Fremont*, 96 Ohio St. at 468 (a state law providing “that local authorities shall not regulate” is “clearly in violation of” Article XVIII, Section 3 because the General Assembly “cannot deprive a municipality of its constitutional rights”); *Greenburg v. Cleveland*, 98 Ohio St. 282, 286 (1918) (“[I]f there were a statute creating the same offense, it could not be exclusive, even if the [G]eneral [A]ssembly of Ohio in express terms prohibited the municipality from legislating upon the same subject-matter.”); *Struthers*, 108 Ohio St. at 263; *Youngstown*; *W. Jefferson*, 1 Ohio St. 2d at 113; *Columbus v. Molt*, 36 Ohio St.2d 94 (1973). To implement the state’s argument, the Court would need to overturn a century long series of cases.

C. This meaning is consistent with both the purpose and history of the Home Rule Amendment.

To determine the original meaning of constitutional text, this Court’s “inquiry must often include more than a mere analysis of the words found in the amendment.” *Knab*, 2020-Ohio-5219, at ¶ 22, citing *State ex rel. Swetland v. Kinney*, 69 Ohio St.2d 567, 570 (1982). If there is any doubt concerning the text, this Court “may review the history of the amendment and the circumstances surrounding its adoption, the reason and necessity of the amendment, the goal the amendment seeks to achieve, and the remedy it seeks to provide to assist the court in its analysis.”

Id. In sum, therefore, both “[t]he purpose of the amendment and the history of its adoption may be pertinent in determining the meaning of the language used.” *Id.*

Purpose and history are guideposts that reinforce the conclusion that the term “general law” would have been understood as a state law also setting forth the police power, in this instance for the general welfare of the State of Ohio.

1. *Prior to 1912, Ohio’s Constitutions allowed the General Assembly to directly run Ohio’s cities.*

The 1803 Constitution created an all-powerful General Assembly. Under that first constitution, the General Assembly “was left free to deal with municipalities as it saw fit.” Mallison, *General Versus Special Statutes in Ohio*, 11 Ohio St.L.J. 462, 465 (1950); Steinglass & Scarselli, *The Ohio State Constitution* 487-488 (2d Ed. 2022), citing Ohio Constitutional Revision Commission (OCRC), *Recommendations for Amendments to the Ohio Constitution: Final Report, Index to Proceedings, and Research* 82 (1977) (*OCRC Final Report*). In fact, in certain years, such as 1834 and 1844, the General Assembly passed far more voluminous acts dictating how and what municipalities could do than they did on any other subject. Mallison at 466.

This practice existed because the General Assembly chartered every single corporation in the State, whether it was a private entity or a municipal corporation. *OCRC Final Report* at 82; Gotherman, *Municipal Home Rule in Ohio Since 1960*, 33 Ohio St.L.J. 589, 589 (1972). Thus, the General Assembly “provided the form, organization and structure of each municipality in a special act which also provided for the powers and functions of the municipality. Since a separate act was passed for each municipality, the form of government and powers of each municipality varied.” Gotherman at 589. By the time of the 1850 Second Constitutional Convention, there was widespread agreement that something needed to be done to end this system and to free “the municipalities themselves of the evils of legislative log-rolling.” Mallison at 466.

It was also true that “[p]rior to the constitutional revisions of 1912, municipal corporations in Ohio were clearly creatures of the General Assembly and agencies of the state.” George D. Vaubel, *Ohio N.U.L.Rev.* at 12. The General Assembly had “complete authority in dispensing power to municipal corporations. Unlike the state, which has all power not denied it, municipal corporations had only such authority as the legislature gave them.” *Id.*

The 1851 Constitution did nothing to reign in the power of the General Assembly to dictate what a municipality could do, how it could be structured, and the power and roles of its officials. The Second Constitutional Convention was faced with a General Assembly that had been proficient in passing local and special laws. “ ‘It has been frequently said that three-fourths of the laws of Ohio are special and local in their nature. . . . We have a two fold abuse in this state—local interference by the central government, and an omnibus of local legislation vested in the court of common pleas.’ ” Walker, *Municipal Government in Ohio Before 1912*, 9 *Ohio St.L.J.* 1, 8 (1948), quoting 1 *Ohio Convention Debates* 285 (1851) (Taylor). Thus, with no recorded debate, the Convention adopted Article XIII of the new 1851 Constitution. Mallison, 11 *Ohio St.L.J.* at 466. The sixth section of that Article provided in part that the “ ‘General Assembly shall provide for the organization of cities, and incorporated villages by general laws.’ ” *Id.*, quoting *Ohio Const.* (1851), art. XIII, § 6. However, “no member of the Convention of 1850-1851 had any idea of the vagaries of judicial interpretation to which this section would be subjected.” *Id.*

The General Assembly did pass laws providing for the organization of cities. First-class cities were those with a population of over 20,000 people; second-class cities were more than 5,000 but less than 20,000 people. Finally, villages were under 5,000 people. *Id.* at 468.

In 1902, Ohio's 11 largest cities were each placed in a different grade of this hierarchy. *Id.* Instead of simply having classes of cities, the General Assembly created grades inside each class, with each city belonging to a different class and grade. *Id.*

In three different cases in 1902, this Court said enough. It concluded that this classification violated both Article XIII, Section 1 and Article II, Section 26. *See Mallison* at 469. After this Court struck down Ohio's municipal code, the then-governor called a special legislative session to adopt a new code. *Id.* at 471. That code split municipalities into two classes: cities (with a population of 5,000 or more people) and villages (with a population under 5,000). *Id.* "Each of the groups was furnished with one uniform governmental scheme. This was no hardship for the villages but it created a situation for cities which was as bad as, or worse than, that existing before the judicial axe fell." *Id.*

Many Ohioans, and particularly the growing progressive movement, demanded a constitutional fix to the various problems in the state government. Thus, perhaps the only benefit from this prior scheme was that it "placed the larger cities in such an impossible situation that their citizens became leaders in the municipal home rule movement." *Id.* at 471-72. Against this backdrop, "diverse groups of social and political reformers" (or "progressives" as they would later be known) spearheaded the revision of several state constitutions, likely in response to "the inequalities of the 'Gilded Age' " that had brought about "a permanent underclass, urban slums, and the worst depression the country had yet experienced." Steinglass & Scarselli at 51.

As one commentator put it, during this era in Ohio

There was a growing demand that the state abandon the *laissez faire* policy and become the protector of the common citizen and laborer in their struggle against organized wealth. A new sort of political thinking had also to be reckoned with, for the feeling seemed general that more political power should be given to the people themselves, through such devices as direct primaries and the initiative in

legislation. All these feelings and demands pointed to a radical overhauling of the old constitution.

Cushman, *Voting Organic Laws*, 28 *Political Science Q.* 207, 207 (1913). While the question to call a constitutional convention was to already be asked in 1911, strong public demand to fix the 1851 Constitution led the General Assembly to submit the question to the electorate in the spring of 1910. *Id.* at 208.

In response, the electorate backed the call for a convention by a 9:1 margin. *Id.* The citizens then elected delegates in a non-partisan vote. Progressives across the State made clear their priorities: “municipal home rule, direct primaries, the initiative and referendum, equal suffrage, improvements to the court system and procedures, and legal protections for workers.” Warner, *Ohio’s Constitutional Convention of 1912*, 61 *Ohio State Archeological and Historical Q.* 11, 13 (1952). Writings by the Muckrakers, “whose factual accounts of graft and corruption in government and industry created disaffection for the existing system,” were another strong influence. *Id.* at 13-14.

The progressives in Cleveland focused on the initiative and referendum as a solution to the ills that Ohio faced. *Id.* at 15. Washington Gladden and the progressives in Columbus followed a different path, however. They formed the United Constitution Committee of Franklin County to advocate for an array of policies including direct democracy and home rule. That same approach was mirrored in Cincinnati. *Id.* at 15-16. Reports showed that of the 419 men who stood as candidates for the 1912 convention across the state, 286 were declared progressives, 120 were known conservatives, and 13 had not expressed their opinions. *Id.* After voting concluded, “only twenty-five percent of the one hundred and nineteen members elected were conservatives, nearly all from the rural districts.” *Id.* at 17.

2. *The 1912 Constitutional Convention gave Ohio the Progressive Constitution on which its progressive delegates campaigned.*

- i. The delegates at the convention were clear that the intent of the Home Rule Amendment was to prohibit the State from merely banning municipal regulation of a subject matter.

The progressives in Ohio leading up to 1912 sought major changes to the structure of Ohio government to guarantee that the people—and not business interests, the wealthy, or the General Assembly—controlled. Warner, 61 Ohio State Archeological and Historical Q. at 23. This included guaranteeing that municipalities had a constitutionally protected right to home rule. They also wanted to guarantee that municipalities had the right to own their own utilities and to exercise police powers locally for the benefit of their citizens. Their thoughts on this subject ultimately became Article XVIII of the Ohio Constitution. The initial draft of Article XVIII, Section 3 read as follows:

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, and no such regulations shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict therewith unless the [G]eneral [A]ssembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon.

2 *Proceedings & Debates* at 1313 (April 18, 1912).

The plain language of this provision made it clear that the original plan was to give municipalities the right to pass police ordinances but to reserve to the General Assembly the right to pass a law stripping municipalities of that right when necessary. But, alas, this provision did not become a part of the Ohio Constitution.

During the debate on this early proposal in the Municipal Government Committee, delegates agreed that municipalities could always go further than state regulations—they just could not weaken them. *Id.* at 1439, 1441, 1469. The delegates understood that if state law, for example,

mandated that all restaurants close at 10:00 p.m., a municipality could not pass an ordinance allowing them to stay open until 11:00 p.m.—but they could absolutely mandate that all restaurants within their limits close at 9:00 p.m. *Id.* at 1441. Likewise, if state law limited the number of saloons in a block to two, a municipality could further limit it to one. *Id.* at 1464. If state law limited the speed of a motor vehicle to 6 m.p.h., a municipality could further curtail it to 4 m.p.h. *Id.* And, finally, if state law set a maximum building height to 100 feet, the municipality was free to further restrict it to 60 feet. *Id.* at 1466.

Furthermore, the position that the General Assembly could pass a law that prohibited municipal action had opposition in the Convention. As one delegate put it, “If any police, sanitary or other regulation passed by a city may be limited by state law, we are no further along the road to home rule than today. If any act of the city can be rendered null and void by a law of the state, where are we? Only where we are today.” *Id.* at 1464 (Smith). During the debate on the Home Rule Amendment, several delegates complained about the General Assembly being able to control cities. They noted that “this centralized form of government which regulates cities from Columbus is that the people of cities are left in a position where they have absolutely no control over their own destinies, and they are blamed for not taking an interest in city government and for lacking in civic patriotism and righteousness. I tell you that the members of the legislature and of past constitutional conventions have been entirely responsible for that condition.” *Id.* at 1484 (Crosser).

Thus, the delegates understood that the proposal, as written, granted the General Assembly the right to pass a law that prohibited municipal regulation. *Id.*, 2 *Proceedings & Debates* at 1465-66. But, of course, that first iteration is not the provision we have today. After the debate, the

Committee amended the proposal. In that version, the language after “not in conflict with general laws” was stricken. *Id.* at 1472-74.

In its amended form in 1912, the provision provided that “[m]unicipalities 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.” *Id.* at 1472 (Doty). And that version is, in significant respects here, what we have today in our State Constitution. Ohio Const., art. XVIII, § 3. And that language differs significantly from Sections 12 and 13, wherein delegates used language retaining in the General Assembly the power to categorically limit municipal regulation in certain enumerated areas.

In the end, the delegates to the 1912 convention submitted 42 proposals to the voters. *Id.* at 2112-2113 (table of the “Vote on Amendments Submitted to the People by the Convention”). The official ballot for these proposed amendments contained a single column with 41 proposals—including a place to check “Yes” or “No” for each proposal—and a second column asking for a vote on licenses for selling liquor. *Id.* at 2006-2011; Bigelow, *New Constitution for Ohio* 3-6 (1912).

The ballot did not explain or offer references to the voters. Bigelow at 3. Ballot Proposal 40 simply stated “Article XVIII, sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14. Municipal Home Rule.” *Id.* at 6. Instead, the voter was left to simply check “Yes” or “No.” *Id.* However, delegates did prepare a sample ballot and a brief explanation of each proposal—for example, what they would do and how they would operate—which was disseminated separately in some instances in the lead up to the election. Cushman, 28 Political Science Q. at 211.

For the Home Rule Amendment, the delegates explained that the General Assembly “reserved the authority to limit the power of cities to levy taxes and incur debts for local purposes,

to control elections, to examine into the financial condition and transactions of all municipalities, and, *by general laws, to make such provisions for police and sanitary regulations, and other similar matters as may be for the general welfare of the state.*” (Emphasis added.) 2 *Proceedings & Debates* at 2050-2055 (incorporating the “Knight Amendment” into the final language that became the “Address to the People”). *Amendments to the Constitution of Ohio Proposed by the Constitutional Convention* 26 (1912).

And this language was also published and circulated in newspapers throughout the state during the lead up to the September 3rd vote. *See, e.g.*, *The Free Press-Standard* (Aug. 8, 1912) (Carrollton), available at <https://ohiomemory.org/digital/collection/p16007coll134/id/1752/rec/3345> (accessed Mar. 8, 2026); *The Celina Democrat* (Aug 9, 1912), available at <https://www.loc.gov/resource/sn88077067/1912-08-09/ed-1/?sp=12&st=image> (accessed Mar. 8, 2026); *Tägliches Cincinnatier Volksblatt* (Aug. 17, 1912) (Cincinnati), at 6; *Express und Westbote* (Aug. 19, 1912) (Columbus), at 4 (“Seite Vier”); *The Daily Journal-Herald* (Aug. 10, 1912) (Delaware), available at <https://ohiomemory.org/digital/collection/p16007coll56/id/50181> (accessed Mar. 8, 2026); *The News-Herald* (Aug. 8, 1912) (Hillsboro), available at <https://www.loc.gov/resource/sn85038161/1912-08-08/ed-1/?sp=12> (accessed Mar. 8, 2026); *The Morrow County Republican* (Aug. 9, 1912) (Mount Gilead), available at <https://ohiomemory.org/digital/collection/p16007coll155/id/1450> (accessed Mar. 8, 2026); *The Democratic Banner* (Aug. 9, 1912) (Mount Vernon), available at <https://www.loc.gov/resource/sn88078751/1912-08-09/ed-1/?sp=12&st=image&r=-0.567,0.102,2.134,1.022,0> (accessed Mar. 8, 2026); *The Clinton Republican* (Aug. 8, 1912) (Wilmington), available at <https://ohiomemory.org/digital/collection/p16007coll112/id/4926>

(accessed Mar. 8, 2026). Thus, everyday Ohioans—voters—in cities and villages across the state would have had this understanding of the term “general law” in Section 3 of the article.

The Cities’ reading is also consistent with many of the other statements made by the delegates to the convention. The delegates argued that the constitutional change made through the proposed amendments “transformed Ohio’s government from extreme conservatism into one of the most progressive in the Union.” *Ohio Legislative History: 1909-1913* 418 (1913) (A.V. Donahey, Delegate from Tuscarawas County). With respect to the Home Rule Amendment, Delegate Donahey noted that it “has placed within the reach of urban populations, freedom from the domination and extortion of public service corporations, and has made possible the beneficial changes in city government.” *Id.* at 419.

Similarly, Henry W. Elson, a delegate from Athens County, noted that “[c]ities have peculiar needs which the rural portions of a State do not understand. A legislature, a majority of which are from the rural sections, lays down the rules for the government of the city, whereas the city knows its own problems and could solve them better if left to itself.” *Id.* at 431. He again noted that, under the Home Rule Amendment, the Ohio Constitution “reserves the right to the Legislature to make a debt limit to the city, to limit its power of taxing its people, and it may require reports from the municipality as to its financial condition and transactions, to examine its books and to call the officials to account.” *Id.* There was nothing to suggest that the Home Rule Amendment allowed the General Assembly to pass laws robbing a municipality of its authority by simply saying it could not legislate on certain topics. The only topics the General Assembly retained that right over were those areas specifically mentioned in the amendment itself—debt limits, taxes, reports on financial conditions, and audits.

Samuel A. Hoskins, a delegate from Auglaize County, noted that the election of delegates “showed that the people of Ohio are distinctly progressive and that they were determined to have a larger share in their government” with one of the “high spots” of the Convention being municipal home rule. *Id.* at 432. He believed that 1912 would mark “the birth of a new freedom, a new Declaration of Independence, a time when the people took back to themselves that right of self-government surrendered in our earlier history.” *Id.* at 435.

George Knight, a delegate from Franklin County, said that Ohio “had long been notable for two things—an antiquated and exceptionally inflexible Constitution, and a decidedly conservative mind and tendency in matters of government and State policy.” *Ohio Legislative History* at 437. He realized that the timing of the election for delegates to the 1912 convention occurred when “there was in the State a strong feeling of discontent, quite special to Ohio and additional to the general radical wave of dissatisfaction and progressive demand that began to sweep over the county a few years ago. This wave was near its crest when the members of the Convention were elected and assembled.” *Id.* In talking about home rule, he stated that the amendment “gives to the urban communities the local home rule and self-government which the problems of modern city life require if our cities are to be or become fit places of residence and work for so large a part of the people.” *Id.* at 438. Likewise, Robert Crosser from Cuyahoga County noted that the adoption of the Home Rule Amendment “was itself worth the calling of the convention.” *Id.* at 444.

What is clear from these delegates—self-described progressives and champions of home rule—is that the understood adoption of Article XVIII, Section 3 would mean more than merely providing new conditions for the General Assembly to simply pass a law restricting a municipality from legislating at all to advance the police power. Instead, the Home Rule Amendment handed

over sovereignty on certain matters relative to local self-government to Ohio municipalities. And it also allowed those municipalities to go further than the State did to regulate in areas of public health and welfare. That is, the State could set a floor below which a municipality could not go; but the State could not deny municipalities the authority to build upon that floor.

- ii. The organized campaign against Ballot Proposal 40—Article XVIII of the Constitution—also recognized that the Amendment removed some sovereign power from the State.

The only real organized opposition to the adoption of the 42 ballot proposals came from the Ohio State Board of Commerce. Cushman, 28 Political Science Q. at 212. The board¹ “opposed every important amendment. In a 160-page pamphlet, it bitterly attacked most of the amendments and advised the Ohio citizen: ‘When in doubt, vote No.’ ” *Id.*

In its pamphlet, the lobbying group complained that the Convention’s proceedings and the official report of its debates, will not be published for some time after the election at which the electors of the State must take final action upon the amendments submitted to them. They must, therefore, act without the aid they might derive from such official sources. In the absence of this official information, the judgment of each elector must be formed upon the consideration he gives to the explanations and arguments for or against each proposition presented by those who advocate for its adoption or rejection.

Proposed Amendments to the Constitution of Ohio to be Adopted or Rejected 7-8 (1912).

However, even in urging the Home Rule Amendment be rejected, the board agreed with its progressive advocates on its scope and purpose. “The questions of public policy involved in it are *all intended to limit instead of uphold the sovereign power of the state, which is one of the chief functions of a state constitution.*” (Emphasis added.) *Id.* at 111. The board went on to complain that the “agitation for ‘municipal home rule’ is a demand to permit cities to *set up a government*

¹ The State Board of Commerce changed its name to the Ohio Chamber of Commerce in 1924. <https://allforohio.com/2018/07/16/ohio-chamber-history-the-reorganization/>.

of their own by nullifying state laws, thus making a city a sovereign power 'instead of a political subdivision of the state with authority to exercise only such powers as are delegated to it by the General Assembly.' (Emphasis added.) *Id.* It even remarked that the Home Rule Amendment would allow “for any or all the forms of municipal government listed in this explanation, and for any other freak forms the rapidly progressive mind of that day may be able to conceive.” *Id.* at 114-115.

Likewise, in discussing the Home Rule Amendment just prior to the September 1912 election, Professor Frank J. Goodnow wrote that “ ‘[t]his great increase in the power of municipalities is finally accompanied by the grant of the people of such municipalities of powers of referendum and initiative over city affairs similar to those granted to the people of the State over State affairs.’” Goodnow, *Municipal Powers in Ohio's Proposed Constitution*, N.Y. Times (Aug. 25, 1912). Professor Goodnow referred to the grants of power as “extremely radical in character, only an instance of the desire which the body (Constitutional Convention) has shown in almost everything which it has done to grant power with regard to all operations of government to that part of the people most keenly interested therein.” *Id.* He summed up his entire understanding in saying that the “people of the municipalities and their representatives in the city government are to be given similar wide powers over municipal matters. The control which the legislature has heretofore exercised over city government is to be reduced as a result of the powers granted to the people of every city to frame its charter.” *Id.*

This all goes to show what the delegates and other advocates (and opponents) of home rule understood about the meaning of Article XVIII, Section 3 when the provision was adopted. Section 3 was a complete rejection of the old way of doing things. Thus, it was understood to do more than simply change the conditions from requiring the General Assembly to pass a law

allowing a city or village to act to one in which the General Assembly was free to simply pass a law prohibiting all municipal action. Instead, Section 3 radically altered the relationship between the State of Ohio and municipalities.

The State wants this Court to ignore the widespread belief of the Convention delegates that the Home Rule Amendment allows the State to build a floor under which no municipality can dig but upon whose foundation, a municipality remains free to build. As the speeches and language quoted above show, the delegates, as well as even the opponents of home rule, understood that the General Assembly post adoption would lack the authority to pass a law stripping municipalities of the ability to regulate conduct under their police powers.

If the Court adopts the State's argument on general law, it will have to overrule not just *Canton*. It will also have to overrule *Fremont*, 96 Ohio St. at 468-470; *Struthers*, 108 Ohio St. at; *Youngstown*, 121 Ohio St. at 342; *W. Jefferson*, 1 Ohio St. 2d at 113; *Molt*, 36 Ohio St.2d at 94. Almost a century ago, this Court posed the following: "Let it be supposed that it provided for a complete prohibition upon municipal legislation. Manifestly such a law would not be effective to take away the power conferred upon municipalities by the plain provisions of the Constitution." *Youngstown*, 121 Ohio St. at 346. However, if the Court adopts the State's position, the General Assembly would be free to pass a law that says a municipality may not pass any ordinances. Based upon the State's argument, that would qualify as general law. It is impossible to believe that the Home Rule Amendment could so easily be turned into a worthless piece of paper. But, again, the Home Rule Amendment is no dead letter.

CONCLUSION

For these reasons, Plaintiffs-Appellees respectfully request that this Court affirm the judgment of the Tenth District.

Respectfully submitted,

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