Supreme Court of Ohio Clerk of Court - Filed January 20, 2026 - Case No. 2025-1057

In the
Supreme Court of Ohio

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

MERIT BRIEF OF APPELLANT STATE OF OHIO

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INTRODUCTION

"Judge-made doctrines … cause confusion." *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 313 (2025) (Thomas, J., concurring). This case proves the point: it presents a question that should be easy under the Ohio Constitution's text, but which becomes more difficult under this Court's judge-made doctrine. Ohio's Home Rule Amendment says that the State's "general laws" override conflicting local laws. Ohio Const., art. XVIII, §3. The question presented here is whether the challenged statute, R.C. 9.681, is a general law. The correct answer is "yes, it is." But whether this Court reaches that answer by the easiest path depends on whether it sticks with the wrongly decided test from *Canton v. State*, 2002-Ohio-2005.

Begin with the easiest answer. As a matter of text and history, the meaning of "general laws" is straightforward. As originally understood in 1912, when Ohioans voted to adopt home rule, the phrase "general laws" meant laws operating uniformly across Ohio. That was how this Court interpreted the phrase before 1912. *Cincinnati St. Ry. Co. v. Horstman*, 72 Ohio St. 93, 109 (1905). And "contextual cues" within the Home Rule Amendment—such as distinctions between "general" and "local" laws—would have reinforced that reading to voters. *Dayton v. State*, 2017-Ohio-6909, ¶94 (DeWine, J., dissenting). Applying original meaning, the challenged statute is a general law: it applies uniformly to municipalities across Ohio. *See* R.C. 9.681. The fact that over twenty cities sue Ohio in this case confirms the statute's statewide reach.

But this Court's decision in *Canton* greatly complicates the analysis. *Canton* announced a confusing four-prong test governing when statutes are general laws. 2002-

Ohio-2005 at ¶21. As the Tenth District noted below, the *Canton* test "raises more questions than it answers." *Columbus v. State*, 2025-Ohio-2408, ¶24 (10th Dist.) ("App.Op."). "Without settled authority," the Tenth District applied *Canton* as it wished, using its preferred approach. *See id.* at ¶¶24–25, 28.

The Court should abandon the *Canton* test. The test is wrong. Its various prongs stretch well beyond the original meaning of "general laws." And by asking judges to critique the "comprehensive[ness]" of state regulations, *Canton* subtly invites judges to rule based on policy preferences. *See* 2002-Ohio-2005 at ¶21. That also strays from original meaning, under which the phrase "general laws" was not an excuse for courts to critique "the policy, the justice, or the wisdom of" state laws. *See Horstman*, 72 Ohio St. at 107. The *Canton* test has had decades to stabilize, but it has proven neither workable nor reliable. The test has instead produced "varying" analytical approaches and "inconsistent" caselaw. *See* App.Op. ¶¶22, 24. The Court should thus return to original meaning.

But if nothing else, the Court should at least clarify *Canton*. As many of the Court's cases teach, a proper application of the test requires courts to consider Ohio's "entire legislative scheme" on a regulated topic, not just a challenged statute or provision in isolation. *Cleveland v. State*, 2010-Ohio-6318, ¶29; *see also Mendenhall v. City of Akron*, 2008-Ohio-270, ¶27. The Tenth District's hyper-narrow focus in this case skirted that guidance, leading it to err in holding the challenged statute unconstitutional.

STATEMENT OF THE CASE AND FACTS

I. Ohio law regulates tobacco, but it does not outlaw flavored tobacco.

This case concerns the regulation of tobacco. As a general matter, such regulation forms a part of the State's traditional police powers. *See, e.g.*, *Austin v. Tennessee*, 179 U.S. 343, 348–49 (1900); *Turner v. Maryland*, 107 U.S. 38, 49, 58 (1882). Like other States, Ohio has a long history of tobacco regulation. For example, one early Ohio law required tobacco inspectors to evaluate whether tobacco was "sound, clean, in good order and condition, and merchantable." 78 Ohio Laws 242 (1881).

Today, Ohio law regulates tobacco in many ways. Some Ohio statutes establish who may purchase and use tobacco products. R.C. 2151.87, 2927.02(B)(1), 2927.021. That is why Ohio's children cannot smoke. R.C. 2151.87(B)(1). Other statutes outline where people may smoke. R.C. 3794.01–.09. That is why Ohioans may smoke in their homes, but not in restaurants. *See* R.C. 3794.03(A), 3794.02(B). Other statutes regulate how and where retailers may sell tobacco products. *E.g.*, R.C. 2927.02(C) (vending-machine standards); R.C. 1333.12 (sales and advertising).

Further examples abound. Ohio prohibits its political subdivisions from using public funds to promote "cigarettes or other tobacco products." R.C. 9.03(C)(1)(b). A full chapter of the Revised Code covers cigarette-related taxes. R.C. 5743.01–.99. Another chapter in the Code houses ignition standards for cigarettes. R.C. 3739.01–.99. Through these and other statutes, the General Assembly has made a variety of policy calls about permissible practices in the Buckeye State—including choices about who may smoke, where people may smoke, and how tobacco may be sold.

Ohio's statutes appreciate that some tobacco products are flavored, while others are not. *See* R.C. 3739.07(B)(5), 5743.01(E). But the General Assembly has not chosen to forbid flavored tobacco. That said, not all practices involving flavored tobacco are permissible under state law. Of particular note, the Attorney General is currently prosecuting several lawsuits against retailers who violated Ohio's consumer-protection laws by selling unauthorized flavored e-cigarettes. *See, e.g.*, *State ex rel. Attorney General Dave Yost v. Central Tobacco and Stuff Inc.*, No. 2025-1510 (jurisdictional request pending before the Court).

II. The General Assembly bars local regulation of tobacco products.

Even with Ohio's many laws concerning tobacco, some call for more regulation. This lawsuit involves twenty-one cities that seek authority to impose their own local tobacco laws. Several cities desire to ban the sale of flavored tobacco. Am. Compl. ¶¶95, 105, 198, 370. Most want to run their own tobacco-sale licensing programs. *Id.* at ¶¶77, 101, 126, 171, 181, 198, 260, 276, 299, 328, 363, 418, 447, 477.

Two years ago, over the Governor's veto, the General Assembly decided against a patchwork of local tobacco regulations. It thus enacted R.C. 9.681, the statute challenged here. The statute stresses that tobacco regulation "is a matter of general statewide concern." R.C. 9.681(B). The statute also memorializes that state law provides "a comprehensive plan with respect to all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products." *Id.*

Critical here, the challenged statute bars political subdivisions, including municipalities, from adding to Ohio's tobacco statutes. The most relevant passage says this:

> 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:
>
> (1) Setting 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.

R.C. 9.681(B). In fewer words, the statute blocks cities from attempting to stack their own local tobacco standards on top of state law. In this way, the General Assembly sought "to preempt political subdivisions from the regulation of tobacco products and alternative nicotine products." R.C. 9.681(D).

The statute further directs courts to award attorney fees to those who successfully challenge local tobacco laws. R.C. 9.681(C). It also preserves political subdivisions' ability to levy taxes "expressly authorized by state law." R.C. 9.681(E).

III. Cities sue and a trial court enjoins the challenged statute.

The plaintiff cities sued shortly before R.C. 9.681 became effective. *See* App.Op. ¶6. They alleged that the statute is not a general law and violates the Home Rule Amendment. Am.Compl. ¶¶575–78. The trial court issued a temporary restraining order, prohibiting the challenged statute's enforcement pending trial. App.Op. ¶7.

The trial court soon held a bench trial, during which a few witnesses testified. App.Op. ¶8. Over the course of those proceedings, the trial court expressed

frustration with the "ad hoc" nature of this Court's home-rule precedent. Trial Tr. 112 (May 17, 2024). "[A]s crazy as it sounds," the trial court lamented, home-rule analysis "almost seems like it comes down to, Gee, what do we think is the best policy." *Id.* at 113. The trial court thus wished for "some brighter line test." *Id.*

At the end of proceedings, the trial court ruled from the bench. It agreed with the cities that R.C. 9.681 is not a general law. *Id.* at 126–28. It thus concluded that R.C. 9.681 unlawfully infringes on municipal authority. *Id.* at 131. (The trial court rejected other claims that the cities raised. *Id.* at 123–25.) The trial court granted the cities a permanent injunction prohibiting any enforcement of R.C. 9.681 against them. Order (May 23, 2024).

IV. The Tenth District affirms.

On appeal, the Tenth District held that R.C. 9.681 is not a general law. App.Op. ¶25. It applied *Canton*, stressing the test's third and fourth prongs. App.Op. ¶19. Under those prongs, a statute (to be a general law) must do more than limit municipal power; it must prescribe a rule of conduct for citizens. *Id.* The Tenth District held that, because "R.C. 9.681 enacts no substantive regulation of tobacco" itself, the statute is not a general law. App.Op. ¶21. The court also suggested that the problems of "densely populated cities"—including "the lethal scourge of tobacco use"—are "best" handled by cities "issuing their own rules and regulations." *See* App.Op. ¶28.

Much of the Tenth District's analysis focused on whether—when deciding whether the challenged statute merely limits municipal power—the court needed to consider Ohio's many other tobacco-related statutes. App.Op. ¶¶22–25. The Tenth District

concluded that it could read the challenged statute in isolation under *Canton*. App.Op. ¶25. More precisely, the Tenth District remarked that precedent applying *Canton* is "inconsistent" and raises "more questions than it answers." App.Op. ¶24. Some cases, the Tenth District noted, forbid reading statutes in isolation. *Id.* (citing *Cleveland v. State*, 2010-Ohio-6318, ¶29). But other cases, it went on, "stray from this directive." *Id.* (citing *Cleveland v. State*, 2014-Ohio-86, ¶16). And, in the Tenth District's view, the plurality and concurrence in this Court's most recent *Canton*-based decision "largely eschew[ed] an *in pari materia* approach." *Id.* (discussing *Dayton v. State*, 2017-Ohio-6909).

"Without settled authority," the Tenth District "opt[ed]" to "forgo" reading R.C. 9.681 "in combination with all state regulations of tobacco." App.Op. ¶¶24–25. Through an isolated reading, the court held that the challenged statute does nothing more than limit municipal power. App.Op. ¶¶21, 25.

While the *Canton* test was binding below, the Tenth District also suggested that "the original intent of the Home Rule Amendment" supported its ruling. App.Op.¶27. Under that court's view of original intent, general laws must affirmatively exercise "regulatory powers of the state" and cannot seek "to preempt" municipalities. *Id.*

V. This Court accepts review.

The State appealed to this Court, presenting two propositions. The first proposition calls on this Court to overrule the *Canton* test and return to the original meaning of the phrase "general laws." The second proposition alternatively asks this Court to

clarify *Canton*, in order to make the test more workable. This Court accepted both propositions for review. *10/28/2025 Case Announcements*, 2025-Ohio-4853.

ARGUMENT

The Home Rule Amendment says that "municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Const., art. XVIII, §3. Applying this text, a state statute takes precedence over a local ordinance if (1) the ordinance exercises police power rather than the power of local self-government, (2) the statute is a general law, and (3) the statute and ordinance conflict. *Mendenhall v. City of Akron*, 2008-Ohio-270, ¶17. The Court has, in turn, devised a complicated four-prong test for determining whether a state statute is a general law. *Canton v. State*, 2002-Ohio-2005, ¶21.

This case asks whether R.C. 9.681 is a general law. The answer is "yes, it is." As the two propositions in this case signal, the Court could reach that answer in either of two ways. The best path forward is for the Court to overrule the *Canton* test and return to the original meaning of "general law" circa 1912. That would bring clarity to an area of Ohio law that has become far too confusing. Alternatively, the Court should clarify the *Canton* test by definitively holding that the test requires courts to consider *all* Ohio statutes on a given subject. Traveling either path, the challenged statute passes constitutional muster.

Appellant State of Ohio's Proposition of Law No. 1:

Consistent with the original meaning of Article VIII, Section 3 of the Ohio Constitution, a general law is a law that operates uniformly across the State. (Overruling Canton v. State*, 2002-Ohio-2005, ¶21.)*

The Court should abandon the *Canton* test and uphold R.C. 9.681. This brief explains why in three parts. *First*, the State unpacks why, as a matter of text and history, a general law is one that operates uniformly throughout Ohio. *Second*, the State addresses why the *Canton* test is wrong and why other *stare-decisis* considerations do not save it. *Third*, the State explains why the Tenth District's contrary view of original meaning lacks merit.

I. Applying original meaning, the challenged statute is a general law.

When this Court interprets the Ohio Constitution, it looks to "the original public meaning of a provision." *State ex rel. Gatehouse Media Ohio Holdings II, Inc. v. Columbus Police Dep't*, 2025-Ohio-5243, ¶17. More precisely, the Court affords "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." *Id.*; *Pfeifer v. Graves*, 88 Ohio St. 473, 487 (1913). So, in "construing constitutional text that was ratified by direct vote," the Court considers "how the language would have been understood by the voters who adopted the amendment." *Centerville v. Knab*, 2020-Ohio-5219, ¶22; *see also Castleberry v. Evatt*, 147 Ohio St. 30, 33 (1946).

The question becomes *how* to discern original public meaning. This Court "generally applies the same rules when construing the Constitution as it does when it construes a statutory provision." *Knab*, 2020-Ohio-5219 at ¶22. That means the "first consideration is always a provision's text." *State ex rel. Gatehouse*, 2025-Ohio-5243

at ¶17. When reading constitutional text, courts generally presume that language put to voters is "written to be understood by the voters." *See District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quotation omitted). Courts should therefore avoid giving ordinary terms "secret or technical meanings." *See id.* at 576–77. For example, when interpreting Ohio's pre-1912 Constitution, this Court construed the words "general" and "special" in an "ordinary and non-technical sense." *Platt v. Craig*, 66 Ohio St. 75, 77–78 (1902).

It is true that some constitutional "language is unclear or of doubtful meaning." *Knab*, 2020-Ohio-5219 at ¶22. In those instances, this Court considers "the history of the [constitutional] amendment and the circumstances surrounding its adoption," with an eye toward "the goal the amendment" sought to achieve. *Id.* The Court often turns to convention proceedings—at which delegates debated proposed amendments—to better discern what Ohioans were thinking at the time of a constitutional amendment. *E.g.*, *Am. Fin. Servs. Ass'n v. Cleveland*, 2006-Ohio-6043, ¶31; *Rocky River v. State Empl. Rels. Bd.*, 43 Ohio St. 3d 1, 14–15 (1989); *Steele, Hopkins & Meredith Co. v. Miller*, 92 Ohio St. 115, 122 (1915); *State v. Foraker*, 46 Ohio St. 677, 690–91 (1889). The Court also looks to pre-existing caselaw, which supplies the legal backdrop for understanding an amendment. *See Smith v. Leis*, 2005-Ohio-5125, ¶63.

In this case, these considerations all point the same way. Both text and history reveal that "general laws" are laws that apply uniformly throughout Ohio.

A. Considering the Home Rule Amendment's text, general laws are laws that operate uniformly across Ohio.

Consider the text first. Again, the Home Rule Amendment says that "municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Const., art. XVIII, §3. The focus here is the meaning of the last two words: "general laws." *See* App.Op. ¶¶17–18, 26.

What did "general laws" mean in 1912? Well, the word "general" meant the same thing it does today. One contemporary dictionary, for example, defined "General" as "Common to many, or the greatest number; widely spread; prevalent; extensive though not universal." *Platt*, 66 Ohio St. at 78 (citing a pre-1912 edition of *Webster's International Dictionary*). Another defined "general" as "completely or approximately universal, including or affecting all or nearly all parts, not partial, particular, local, or sectional." *Dayton v. State*, 2017-Ohio-6909, ¶90 (DeWine, J., dissenting) (quoting *The Concise Oxford Dictionary of Current English* 342 (1912), alterations accepted). And like today, the antonym of general in 1912 was "special." *Platt*, 66 Ohio St. at 77–78. "Special" meant "Particular; peculiar; different from others; … Designed for a particular purpose, occasion or person.… Limited in range; confined to a definite field of action." *Id.* at 78 (citing a pre-1912 edition of *Webster's International Dictionary*). It follows that voters in 1912—armed with nothing more than the ordinary meaning of common terms—would have thought of a "general" law as a law that was universally, commonly, or widely applicable.

Context clues would have reinforced this dictionary understanding. As with other texts, it is critical to read constitutional language in the context of surrounding language. *Cf. Great Lakes Bar Control, Inc. v. Testa*, 2018-Ohio-5207, ¶9 (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). That principle matters here because, when read in full, the Home Rule Amendment draws distinctions between "general laws," "local … regulations," and exercises of "local self-government." Ohio Const., art. XVIII, §3. This general-local divide would have made voters especially prone to read "general laws" as "those not confined within a specific locality." *Dayton*, 2017-Ohio-6909 at ¶94 (DeWine, J., dissenting).

Voters reading the Home Rule Amendment, moreover, would have appreciated that the phrase "general *laws*" was a phrase with a legal meaning. And that phrase's meaning was established at the time. Specifically, "general laws" were commonly defined as laws that "operat[ed] throughout the jurisdiction of the legislative body"; those that "affect[ed] equally all persons or things of the same class." *Id.* at ¶92 (quoting 1 Walter A. Shumaker & George Foster Longsdorf, *The Cyclopedic Law Dictionary* 409 (1912)); *see also id.* at ¶93 (referencing a 1910 edition of *Black's Law Dictionary*). This Court's pre-1912 precedent—discussed in much greater detail below (16–19)—taught the same lesson. General laws were those that "operat[ed] equally upon all of a group of objects" and were "restricted to no locality." *Cincinnati St. Ry. Co. v. Horstman*, 72 Ohio St. 93, 109 (1905) (quotation omitted). Perhaps most importantly, a pre-existing part of Ohio's Constitution already defined general law, at least in practical effect. Article II, Section 26 taught that laws of a "general nature"

were those with "a uniform operation throughout the state." Ohio Const., art. II, §26; *see also below* 16.

Thus, even without a close look at history, the Home Rule Amendment's text reveals that "general laws" are laws that operate uniformly across Ohio. A deeper dive into history bolsters the point.

B. The history of Ohio's Home Rule Amendment reinforces that general laws are laws that operate uniformly across Ohio.

Ohio's Home Rule Amendment was adopted out of Ohio's 1912 constitutional convention. *Maumee v. PUC*, 2004-Ohio-7, ¶8 n.3. But to fully appreciate the brand of home rule Ohioans adopted, one must understand Ohio's earlier experiences. This brief starts with Ohio's pre-1912 history and then turns to the events of 1912.

1. Before 1912, the Dillon rule strictly limited municipal power; municipalities possessed only the powers that the General Assembly clearly granted through general laws.

The history of home rule begins with some basic points about our federalist structure. "As every schoolchild learns," the federal "Constitution establishes a system of dual sovereignty between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). In joining the Union, the States surrendered some enumerated powers to the federal government. *Id.* But the States retained their remaining sovereign powers. *Id.*; U.S. Const., amend. X. Relevant here, the States kept the "broad authority to enact legislation for the public good." *Bond v. United States*, 572 U.S. 844, 854 (2014). That authority is "often called a 'police power.'" *Id.* (quoting *United States v. Lopez*, 514 U.S. 549, 567 (1995)). This case, in turn, focuses on how much of this police power Ohio has given to its municipalities.

The Dillon rule. The starting assumptions of federalism—as to the divide between federal and state power—do not apply to the relationship between States and their municipalities. Municipalities do not possess any automatic or reserved sovereignty in the same way that States do. *Campbell v. Cincinnati*, 49 Ohio St. 463, 474 (1892). Municipalities are instead "creatures" of the States, which the States create "for the purpose of exercising a part of" their powers. *Atkin v. Kansas*, 191 U.S. 207, 220 (1903). Or, as this Court has put it, municipalities "being created for convenience and economy in government, and to aid the state in legislation and administration of local affairs, are always subject, in their public capacity, to the control of the state." *Ravenna v. Pennsylvania Co.*, 45 Ohio St. 118, 121 (1887). As a result, "municipal corporations act not by an inherent right of legislation, like the legislature of the state." *Campbell*, 49 Ohio St. at 474. Picture it this way: our government's shape is not a pyramid but a diamond—States delegate some powers up to Congress and others down to localities, and States keep the rest.

That leaves the issue of *how* municipalities receive power from the State. In Ohio's early years, the State followed the so-called "Dillon rule" for assessing municipal power. *See* George D. Vaubel, *Municipal Home Rule in Ohio*, 3 Ohio N.U. L. Rev. 1, 12 (1975). Under the Dillon rule, municipal powers were "strictly limited" to only powers that state legislatures "expressly granted or clearly implied." *Bloom v. Xenia*, 32 Ohio St. 461, 465 (1877). Courts, as a result, resolved any "doubtful claims" of power by ruling "against" municipalities. *Id.*; *accord Ravenna*, 45 Ohio St. at 121.

The problem of special laws and the 1851 Constitution. With the Dillon rule in mind, rewind to the early 1800s. By the time Ohio joined the Union in 1803, Ohioans were already settling in local communities throughout the new State. Harvey Walker, *Municipal Government in Ohio Before 1912*, 9 Ohio St. L.J. 1, 1 (1948). But local governments were an afterthought in Ohio's first Constitution. *Id.* at 2. The Constitution of 1802 contained only a fleeting "reference to local government," concerning officials within townships. *Id.*

To fill the gaps Ohio's first Constitution left, early lawmakers enacted "special" laws to help local communities function. *Id.* at 5–6. These "special" laws were laws that conferred power to *individual* municipalities. They were thus tailored to meet the needs of the specific municipality in question. A special law, for example, might address sewers in Toledo. *See Blanchard v. Bissell*, 11 Ohio St. 96, 103 (1860) (discussing special legislation from 1849). But special laws soon crowded Ohio's legal code and took up an inordinate amount of lawmakers' time. In 1834, for instance, the General Assembly engaged in "334 separate acts" of "local" legislation. Walker, *Municipal Governments* at 6; *see also State ex rel. Fosdick v. Mayor, Recorder & Trustees of Perrysburg*, 14 Ohio St. 472, 484–85 (1863) (noting that, in Ohio's early years, the General Assembly "liberally granted … special acts" conferring municipal powers).

To resolve these and other issues, Ohioans amended the state Constitution in 1851. Relevant here, Ohio's 1851 Constitution set new rules governing the General Assembly's use of general laws and special laws. Various provisions placed limits on the legislature's ability to address certain subjects through special laws. *Id.* at 479–

80. One provision required that the General Assembly "provide for the organization of cities, and incorporated villages, by general laws." Ohio Const., art. XIII, §6. Another prohibited the General Assembly from using "special act[s]" to bestow corporate power. Ohio Const., art. XIII, §1. And, a few decades later, this Court recognized that there was "no distinction between private and municipal corporations" for purposes of this "special act" restriction on bestowing corporate power. *State ex rel. Attorney Gen. v. Cincinnati*, 20 Ohio St. 18, syllabus ¶1 (1870).

In sum, the 1851 Constitution prohibited the General Assembly from using special laws to bestow municipal power. It instead mandated that the General Assembly use general laws for that purpose. And the 1851 Constitution also set forth the defining characteristic of general laws. It required that "All laws, of a general nature, shall have a uniform operation throughout the state." Ohio Const., art. II, §26.

Pre-1912 cases about general and special laws. Given the 1851 Constitution's restrictions on special legislation, this Court eventually needed to draw lines between general laws and special laws. Various cases emphasized that the central feature of a general law was uniform application across the State. *See, e.g.*, *Platt*, 66 Ohio St. at 79; *State ex rel. Wirsch v. Spellmire*, 67 Ohio St. 77, 82–83 (1902); *Kelley v. State*, 6 Ohio St. 269, 272 (1856). As one early case described, the Ohio Constitution's "own affirmative terms" embraced the notion "that a uniform operation throughout the state shall be given to all laws of a general nature." *Kelley*, 6 Ohio St. at 271. Another case stressed that a general law must "in its operation, be co-extensive with the state, and co-extensive with every class brought within the purview of

the statute." *Platt*, 66 Ohio St. at 79. At the same time, there was no requirement "that a law of a general nature … affect every individual in the state, or every small subdivision of territory within the state." *Id.*

For purposes of interpreting the Home Rule Amendment, the most pressing issue is how the law stood in 1912. On that front, this Court's unanimous decision in *Horstman*, 72 Ohio St. 93, likely offers the best guidance. There, the Court held that a law about street railways was a general law, even though the law had the effect of treating some railroad companies differently from others. To reach that result, the Court embraced the following definition of general law:

> A law framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law.

Id. at 109 (quoting *State ex rel. Van Riper v. Parsons*, 40 N.J.L. 123, 125 (1878)); *accord Bronson v. Oberlin*, 41 Ohio St. 476, 481 (1885). In fewer words, the critical aspects of a general law were that it be "restricted to no locality" and that it "operat[e] equally upon" the objects that it covered. *Horstman*, 72 Ohio St. at 109.

Noticeably, the general-law definition from *Horstman* also mentions that classifications within general laws must be "distinguished by characteristics sufficiently marked and important to make them a class by themselves." *Id.* It helps to place that statement in context. At the turn of the twentieth century, the Court was concerned with the General Assembly's use of "sham" classifications to "evade" constitutional limits on special legislation. *Id.* at 107. Again, the 1851 Constitution

prohibited the General Assembly from using special laws to confer municipal power. *See* Ohio Const., art. XIII, §§1, 6. But that prohibition proved unworkable, as "cities grew and became more numerous" and "their problems began to differentiate them from one another." Walker, *Municipal Government in Ohio Before 1912*, 9 Ohio St. L.J. at 10. Thus, to help particular cities respond to their unique needs, the General Assembly often resorted to "subterfuge" by drawing "excessive and absurd classifications" designed to isolate cities for individual treatment. *Id.* at 10–11. The result was that, by 1902, each of Ohio's "eleven largest cities … was isolated in a special class and grade under the guise of classification." *Id.*

For a while, this Court tolerated the General Assembly's pro-city subterfuge. *Id.* at 10 n.12. But eventually, "the house of cards" fell. *Id.* at 11. In a series of 1902 decisions, the Court invalidated multiple state laws, finding them to be unlawful special legislation. *Platt*, 66 Ohio St. at 81; *Cincinnati v. Trustees of Cincinnati Hospital*, 66 Ohio St. 440, syllabus ¶¶2, 4 (1902); *State ex rel. Knisely v. Jones*, 66 Ohio St. 453, syllabus ¶4 (1902); *State ex rel. Attorney Gen. v. Beacom*, 66 Ohio St. 491, 506 (1902). The General Assembly styled those laws as applying to a "class" of municipalities, but in truth they applied only to specific cities. For example, in *Platt*, the Court invalidated a law about bridges as "a special act applying only to the city of Toledo." 66 Ohio St. 75, syllabus ¶¶1–2. Thus, reading *Horstman* through this lens, the Court's discussion of classifications reinforced that the General Assembly could not use "false and unnatural classification[s]" to give special laws "the appearance of" general laws. 72 Ohio St. at 107.

Simultaneously, *Horstman* emphasized that courts should not use policy beliefs as an excuse for striking down general laws. Under *Hortsman*'s reasoning, consideration of whether a classification was "sufficiently marked and important" did not provide courts with a license to deem classifications "unwise or unjust." *Id.* at 108–09. The Court instead cautioned that it was ordinarily up to the General Assembly to determine "the policy, the justice, or the wisdom" of any classification. *Id.* at 107. In other words, *Horstman* taught that, so long as a classification was not a sham for special legislation, courts had "no right to attempt to defeat" the underlying "purpose" of a general law. *Id.* at 109. Any complaint that a general law was "imperfect in its operation" was a complaint for the General Assembly. *Id.*

An analogy to modern law is perhaps helpful. Historically speaking, it is fair to say that the general-law requirement within Ohio's 1851 Constitution provided a *limited* form of equal protection to cities. The protection was akin to modern-day rational basis review; a standard that is incredibly deferential to the State. *See Armour v. City of Indianapolis*, 566 U.S. 673, 680–81 (2012) (holding that, under rational basis review, a legislative classification violates the federal Equal Protection Clause only if there is no conceivable "policy reason for the classification" (quotation omitted)). The general-law requirement did not prevent the General Assembly from drawing classifications between cities based on "policy" judgments. *Horstman*, 72 Ohio St. at 107. But if the only conceivable "legislative purpose" of a classification was to "evade … constitutional limitation" on special legislation, then the constitutional would be "arbitrary," a "sham," and unconstitutional. *Id.*

Pre-1912 summary. Three points recap the state of affairs before Ohio's 1912 constitutional convention. *First*, by 1912, there was already a body of caselaw distinguishing between general and special laws. *Second*, just a few years before the convention, this Court unanimously and expressly defined "general law" to mean a law that "operate[s] equally upon" all objects within a given classification. *Horstman*, 72 Ohio St. at 109 (quotation omitted). *Third*, the Court's cases before 1912 also taught what was *not* a general law: the legislature could not resort to "sham" classifications that—while phrased generally—really applied only to specific municipalities.

2. Convention debates confirm that the Home Rule Amendment sought to reverse the Dillon rule's presumption, not to give municipalities unchecked police powers.

Against the above backdrop, move to the convention halls where it happened. Around 1910, a wide coalition of groups, pushing both progressive and conservative ideas, called for a convention. Steven H. Steinglass, *The Ohio State Constitution* 51–52 (2d ed. 2022). Both major political parties supported a convention, and Ohio voters approved a convention "by a ten-to-one margin." *Id.* at 53. So, in the first days of 1912, roughly 120 elected delegates from across the State gathered in Columbus to discuss changes to the Ohio Constitution. *Id.* Several delegates soon proposed amending the Constitution to provide "home rule" for municipalities. One of those proposals (Proposal No. 272) would eventually become the "Home Rule Amendment" located at Article XVIII, Section 3 of the Ohio Constitution. *See* 2 Proceedings and Debates of the Constitutional Convention of the State of Ohio, 1433 (1912) (hereafter, "*Convention Debates*").

The committee proposal. Delegates referred the various home-rule proposals to a committee on municipal government. That committee spent roughly two months studying home rule. Vaubel, *Municipal Home Rule in Ohio*, 3 Ohio N.U. L. Rev. at 13–14. By April 1912, the committee settled on a unified proposal. Most relevant here, Section 3 of the committee's proposal concerned municipalities' ability to exercise police powers. In its original form, Section 3 of the proposal said this:

> 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 general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon.

Convention Debates at 1313. This original proposal's language thus recognized the ability of "general laws" to override conflicting acts of local police power. *Id.* But the original proposal made it relatively difficult for the State to create a conflict. It said that no conflict would "be deemed … *unless*" the General Assembly expressly denied "municipalities the right to act." *Id.* (emphasis added).

George Knight, a professor of history at The Ohio State University, presented the committee's proposal to the full convention. *Convention Debates* at 1433; Walker, *Municipal Government in Ohio Before 1912*, 9 Ohio St. L.J. at 13. Professor Knight explained that the proposal sought to "accomplish three things" that were "fundamental" to "municipal home rule." *Convention Debates* at 1433. First, the proposal sought to give cities the flexibility to structure their internal governments in "different forms." *Id.* Second, the proposal sought to specifically address municipal power over

public utilities. *Id.* Third, the "*main* thing" the proposal sought was to "get away" from "the fixed rule of law" under which municipal power was presumed to be "strictly" limited to "the powers granted by the legislature." *Id.* (emphasis added). Thus, as Professor Knight and other convention delegates discussed at length, the main goal of the Home Rule Amendment was to reverse the Dillon rule's presumption against municipal power. *E.g. Convention Debates* at 1433, 1439–41, 1447, 1456–58, 1461, 1471.

But while the proposal sought to change this *default presumption*, Professor Knight assured convention delegates that the State's *ultimate authority* would remain. For example, Professor Knight promised that the proposal left "the power of the state as broad hereafter with reference to general affairs as it has ever been." *Id.* at 1433. He also said that the proposal would not allow cities to "destroy or weaken any statute enacted by the general assembly of uniform application." *Id.* at 1440.

Perhaps most critical here, Professor Knight recognized that the State would retain the power to forbid municipal action. *Id.* at 1433, 1439. In his opening remarks, Professor Knight described that municipalities would receive "the power to do those things which are not prohibited," those things "not forbidden by the lawmaking power of the state." *Id.* at 1433. In his next breath, Professor Knight explained that the new presumption in favor of municipal power could be "overcome by showing that the power had been *denied* to the municipalities." *Id.* (emphasis added). When Professor Knight addressed Section 3 of the proposal specifically—the section about municipal police powers—he reiterated that "all municipalities" could be "forbidden to legislate

on [a] particular phase of police regulation." *Id.* at 1439. Along the same lines, Professor Knight recognized that there would be instances in which "the legislature has forbidden all municipalities to touch" on a "particular subject." *Id.* Finally, in response to questions, Professor Knight similarly acknowledged that local police-power regulations could be "forbidden by the state" from going "into effect." *Id.*

Of course, Professor Knight was not the only member of the committee on municipal government. George Harris, the chair of that committee, also spoke at length about the home-rule proposal. *Id.* at 1456–61. According to Harris, the committee's home-rule proposal was a product of "two conflicting forces." *Id.* at 1456. Some home-rule "radicals" thought that municipalities should receive "complete sovereignty …, independent of the state." *Id.* Others "demanded that the state should be supreme." *Id.* By Harris's account, the home-rule radicals "made very important concessions." *Id.* The committee's majority, Harris said, "thought that the state ought to be dominant." *Id.* at 1457. Harris thus promised that if the delegates "read this proposal carefully," they would see that the State indeed remained "dominant." *Id.* at 1457.

Like Professor Knight, Harris thought that the proposal's main goal was to undo the Dillon rule. The practical "meat" of the "whole proposal," Harris summarized, was to reverse "the old order of things" under which municipalities needed "specific authority" from the General Assembly to act. *Id.* at 1461; *see also id.* at 1458 (noting the proposal "would in principle reverse" the "presum[ption] that no function not distinctly enumerated by the general assembly can be exercised by the municipality"). And like Professor Knight, Harris recognized that the State would retain the ability

to forbid municipalities from acting. When discussing Section 3 of the committee's proposal, Harris recognized that "the essence of home rule" included the notion that municipal power could be "specifically denied" by the General Assembly. *Id.* at 1458.

Debates and amendments. Convention delegates discussed the committee's home-rule proposal at length and changed various aspects of the proposal. *Id.* at 1429–98. A few aspects of those proceedings warrant discussion.

One area of controversy among delegates was the phrase "affecting the welfare of the state, as a whole." Within Section 3 of the committee's original proposal, that language modified the phrase "general laws." *Above* 21. But many thought the language was unnecessary and added no value to the phrase. *See, e.g.*, *Convention Debates* at 1439, 1442, 1446, 1447, 1468, 1471, 1473. Some also worried that the language was a veiled attempt to inject another hot-button issue—liquor regulation—into home rule. *E.g., id.* at 1441, 1457, 1469, 1471; *cf. also id.* at 1467 (one delegate accusing another of being "dry as summer's dust").

Ultimately, convention delegates voted to eliminate the affecting-welfare language. *Id.* at 1472. But the debate over that language sparked considerable discussion about the meaning of "general laws." Professor Knight, for example, described a general law as "one that in fact and in form touched the subject that affected the state universally." *Id.* at 1442. Professor Knight further clarified that a subject could affect Ohio "universally" even if the subject's importance varied by location. A law about bridges, Professor Knight explained as an example, would be a general law if it applied "whenever you have a bridge," even if there were some locations in Ohio that

"did not have any bridges." *Id.* Professor Knight further emphasized that a general law "must operate throughout the whole state." *Id.* He contrastingly described "special legislation" as capturing laws that "apply to one particular place." *Id.*

Other delegates expressed a similar understanding. For instance, one delegate described general laws as those having "uniform operation throughout the state"; whereas special laws applied "to but one place in Ohio." *Id.* at 1481. If a law could be used "more than once," the same delegate continued, "it is not a special law." *Id.* Another delegate picked up on this discussion. He described that while a "special law applies to one" city, a "general law applies to the class" of cities. *Id.* Still another delegate understood that most legislation would be general in nature. *Id.* at 1464. "It is hard to think of something," the delegate noted, "that does not concern the welfare of the state as a whole." *Id.* at 1464.

Throughout this discussion, delegates knew they were using legal terms that this Court had already interpreted. One delegate described the legal backdrop this way:

> The term "general laws" is one that has been the subject of interpretation for many years. Courts have thoroughly well settled the construction of that term and we need have no doubt about what the future rule will be. Therefore you are not launching on any untried sea. You simply open the doors and lay down the bars for the municipality, big or little, to do everything it is not prohibited from doing by general laws.

Id. at 1471–72. The "words 'general laws,'" another delegate simplified, "have been adjudicated, as they call it, that they have been talked about by the courts." *Id.* at 1472. And the meaning of special laws, the delegates similarly stressed, had "been determined over and over again." *Id.* at 1481.

Another home-rule debate addressed the State's ability to override local laws. Recall that, under the committee's original home-rule proposal, state and local laws would not "be deemed in conflict … *unless* the general assembly … shall specifically deny all municipalities the right to act thereon." *Id.* at 1313 (emphasis added). This language imposed a clear-statement rule in municipalities' favor: namely, a conflict would not exist absent the legislature's express removal of municipal authority. *See Convention Debates* at 1463, 1470. As one delegate put it, the language required the General Assembly to "specifically say[] so" to create a conflict. *Id.* at 1470.

The delegates deleted this clear-statement rule. *Id.* at 1472, 1474. Tellingly, the "advocates of home rule" wanted the language to stay; they wanted municipalities to "have full right to act" until the State spoke in a "clear and certain" matter. *Id.* at 1463; *see also id.* at 1484–85 (delegate arguing that the amendment "struck out … the very thing we have been striving for"). But the delegates who wanted to delete the language—those who prevailed in the debate—worried that requiring such specificity would give municipalities too much power to "nullif[y]" state laws. *Id.* at 1469–70. That is, some delegates feared that the committee's clear-statement rule went too far in giving municipalities "the superior and supreme right to act in all things pertaining to the police power unless it is specifically taken away." *Id.* at 1463.

At day's end, the pro-State side won the debate. *See id.* at 1474. The delegates removed the clear-statement rule. The amended language thus left the State free to "prohibit[]" municipal action "by general laws," with no special strings attached. *See id.* at 1472.

Convention summary. Three points stand out from the convention history. *First*, the debates show that the main goal of the Home Rule Amendment was to reverse the Dillon rule's default presumption against municipal power. *See, e.g.*, *Convention Debates* at *Convention Debates* at 1433, 1439–41, 1447, 1456–58, 1461, 1471. *Second*, delegates understood that "general laws" was a legal term with an established meaning. *See, e.g.*, *id.* at 1442, 1464, 1471–72, 1481. *Third*, delegates recognized that the State would retain the ability to prohibit, forbid, or deny local exercises of police power. *See, e.g.*, *id.* at 1433, 1439, 1458, 1466, 1471–72, 1486.

3. Newspaper articles from 1912 reinforce the Home Rule Amendment's plain meaning.

Unsurprisingly, newspapers across Ohio covered the 1912 convention and the changes that delegates were contemplating. While newspapers surely had their own agendas (many if not most supported home rule), newspaper articles from the time offer additional clues for how voters would have perceived the convention's home-rule proposal. *See* Timothy D. Lanzendorfer, *Originalism at Home: The Original Understanding of Ohio's Home Rule Amendment*, 73 Case W. Res. 1, 15 (2022). It does not appear that any "newspaper directly addressed the meaning of the term 'general laws.'" *Id.* But, at a higher level of abstraction, newspapers expressed views about how home rule would (and wound *not*) change the dynamic between cities and the State. *Id.* Thus, newspapers articles from 1912 offer at least some insight into voters' understanding of what the Home Rule Amendment would accomplish.

Most important here, although newspapers covered the varying sides of the home-rule debate, articles from the time generally recognized that, under the convention's

home-rule proposal, the State's "power would remain as a check on municipal power." *Id.* at 24. For example, the Cleveland Plain Dealer described home rule as "permitting" cities to do things "not definitely forbidden by law." *Home Rule for Cities*, Columbus Evening Dispatch, Apr. 25, 1912, at 4 (originally from Cleveland Plain Dealer). The Cincinnati Enquirer similarly described that home-rule municipalities would be able to do "whatever they wish in the manner of governing themselves so long as what they do is not forbidden by the state." *Self-Rule: People Must Decide*, Cincinnati Enquirer, May 1, 1912, at 20. The Toledo Blade, for its part, complained that the 1851 Constitution's restrictions on municipal legislation "gave us … a hundred puzzles." *Remember Home Rule*, Columbus Evening Dispatch, Aug. 19, 1912, at 4 (from the Toledo Blade). The convention's home-rule proposal, that paper advocated, would "grant the right of home-rule, *properly restricted, properly held in leash*, but yet a quite adequate and sufficient home-rule." *Id.* (emphasis added). Around the same time, the Blade also covered a speech from Toledo's mayor. *Mayor at Wauseon*, Toledo Blade, Aug. 29, 1912, at 2. He stressed to voters that they "need not fear that home rule would take away all power of the state over cities, as police power would still exist." *Id.*

Convention delegates also used newspapers to communicate with voters. Towards the end of the convention, the delegates authored an address to the people, which they then advertised in newspapers. *Convention Debates* at 2073–74. The address included a short description of the delegates' home-rule proposal. It told voters that, under the proposal, cities and villages would be able to adopt local regulations that

were "not in conflict with general laws." *Convention Debates* at 2052, 2055. It further noted that the proposal "specifically reserved" the General Assembly's authority to enact general laws covering "police and sanitary regulations and other similar matters." *Id.* These statements likewise indicated that home rule would *not* mean localities receiving unchecked police powers.

All told, newspaper coverage during 1912 would have reinforced to voters that, even with home rule, the State would "keep its power of preemption over local governments" on matters of police power. Lanzendorfer, *Originalism at Home*, 73 Case W. Res. at 25.

*

Piecing this history together, the origins of home rule in Ohio bolster the Home Rule Amendment's plain text. When Ohio adopted the Home Rule Amendment in 1912, the term "general laws" had an established meaning. Nothing within the above history suggests that those who drafted or voted on the Home Rule Amendment intended to alter that meaning. Thus, as a matter of both text and history, the term "general law" means a law that operates uniformly across Ohio.

C. Under the correct understanding of "general laws," the challenged statute passes constitutional muster.

If this Court returns to the original meaning of "general laws," then the general-law analysis in this case is straightforward. That analysis should focus on whether a challenged statute operates across the State and applies equally to the legislative classification it covers. Taking that approach, R.C. 9.681 is a general law. The challenged statute applies to municipalities throughout Ohio. Indeed, the fact that

twenty-one different cities sued Ohio in this case offers a sure signal of the challenged statute's statewide reach and uniform application. Or, said another way, there is no feasible argument that the challenged statute is a "sham" classification—that is, a special law in disguise. *See Horstman*, 72 Ohio St. at 107; *above* 17–19.

The decision below based its ruling solely on general-law analysis. *See* App.Op. ¶¶17, 26. But to the extent any further analysis is necessary, other aspects of the home-rule analysis are also straightforward. Accounting for the Home Rule Amendment's remaining elements, a general law will override a local ordinance if (1) the ordinance exercises police power as opposed to power of local self-government and (2) the two bodies of law conflict. *Mendenhall*, 2008-Ohio-270 at ¶17. Here, everyone agrees that the plaintiff cities seek to exercise local police powers. *See* App.Op. ¶17.

The conflict is also obvious. As this Court has described, a home-rule conflict exists when a local "ordinance permits or licenses that which" a state statute "forbids," or "vice versa." *Struthers v. Sokol*, 108 Ohio St. 263, syllabus ¶2 (1923); *accord Newburgh Heights v. State*, 2022-Ohio-1642, ¶29. More specifically, this Court has clarified that the General Assembly may create a conflict by seeking "to control a subject exclusively." *Mendenhall*, 2008-Ohio-270, ¶32. For this "subset" of conflict, a conflict exists when the State imposes some regulations in a field and "expressly signal[s] that the state has exclusivity in the area." *Id.* at ¶¶31–34.

A conflict exists here under either *Sokol* or *Mendenhall*. Start with *Mendenhall*'s more specific approach. As discussed above (at 3–4), the State regulates the field of tobacco in many ways. And the challenged statute "expressly signal[s]" the State's

intent to "reserve to itself" this field. *Mendenhall*, 2008-Ohio-270, ¶34. The statute blocks cities from stacking their own local tobacco standards on top of state law. R.C. 9.681(B)(1). And, to leave no doubt, the General Assembly explicitly codified its "intent … to preempt political subdivisions" from imposing their own regulations on top of state regulations. R.C. 9.681(D). Combining both the challenged statute's express prohibition and codified intent, the State has undeniably chosen "to control" the subject of tobacco "exclusively." *Mendenhall*, 2008-Ohio-270, ¶32.

Sokol's more generalized framework yields the same result. When local ordinances regulate tobacco, they do something that the challenged statute forbids. Or consider things from the perspective of Ohio citizens and businesses. In practical effect, the challenged statute tells citizens and businesses across Ohio that they may engage in any tobacco-related conduct that state or federal law does not forbid. *Cf. City of Cleveland v. State*, 2010-Ohio-6318, ¶¶1, 29 ("*Cleveland Firearms*") (recognizing that a statute blocking local firearm regulations also helped establish rules for lawful citizen conduct). For instance, while statutes recognize that some tobacco products are flavored—R.C. 3739.07(B)(5), 5743.01(E)—Ohio's statutory scheme does not bar the sale or purchase of flavored tobacco products that otherwise comply with federal and state law. Several of the plaintiff cities, however, seek to ban the sale and purchase of flavored tobacco. Am. Compl. ¶¶95, 105, 198, 370. Thus, by trying to make citizens and businesses comply with extra tobacco-related requirements and restrictions, localities are effectively declaring certain conduct "wrong" that the State has declared to be "right." *See Sokol*, 108 Ohio St. at 268.

The bottom line is this: because R.C. 9.681 is a general law, because the plaintiff cities seek to exercise local police powers, and because the two bodies of law are in conflict, Ohio prevails in this case. *See Mendenhall*, 2008-Ohio-270 at ¶17.

II. The Court should abandon *Canton*.

Admittedly, this Court's precedent about the meaning of general law complicates the matter. As mentioned above, this Court in *Canton* established a four-prong test for assessing whether a state statute is a general law. 2002-Ohio-2005, ¶21. The question becomes whether this Court should overrule that test. It should.

To understand why, begin with the doctrine of *stare decisis*. That doctrine normally "dictates adherence to prior judicial decisions." *State v. Harper*, 2020-Ohio-2913, ¶38. But it does not endorse "'petrifying rigidity.'" *Id.* (quoting *Clark v. Southview Hosp. & Family Health Ctr.*, 68 Ohio St.3d 435, 438 (1994)). The doctrine instead ensures "certainty and stability" in the law. *Id.* (quotation omitted). It follows that when precedent brings "doubt and confusion, it loses its right to survive." *Id.* (quotation omitted). At bottom, this Court "not only has the right, but is entrusted with the duty to examine its former decisions." *Westfield Ins. Co. v. Galatis*, 2003-Ohio-5849, ¶43. And there will come times when the Court should "discard its former errors." *Id.*

When deciding whether to overrule an earlier decision, this Court typically considers (1) whether "the decision was wrongly decided," (2) whether "the decision defies practical workability," and (3) whether abandoning the decision would impose "an undue hardship for those who have relied upon it." *Id.* at ¶48. As to the first

consideration, this Court has recognized that it "does no violence to the legal doctrine of *stare decisis* to right that which is clearly wrong." *Id.* at ¶60 (quoting *State ex rel. Lake Cty. Bd. of Cty. Commrs. v. Zupancic*, 62 Ohio St. 3d 297, 300 (1991)). For workability, the Court examines whether a decision has caused "widespread confusion," caused "conflicts" among the lower courts, or "muddied the waters of" litigation by making "simple" issues "complex." *Id.* at ¶50. As for the final factor, *stare decisis* "accommodates only legitimate reliance interests." *South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 186 (2018) (quotation omitted). Thus, when a decision does not set "a clear or easily applicable standard," any reliance on that decision is necessarily "misplaced." *Id.* Or, to borrow this Court's recent words, if "caselaw invites judges to engage in standardless policymaking," then "it deserves" to be overruled. *State ex rel. Martens v. Findlay Mun. Ct.*, 2024-Ohio-5667, ¶¶21, 23; *cf. also Harper*, 2020-Ohio-2913, ¶¶38–39.

This Court has recognized, moreover, that *stare decisis* applies with less force to decisions interpreting Ohio's Constitution. *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶27 (collecting authorities). Because the legislature cannot "correct erroneous interpretations" of the Constitution—as it can with "statute-based precedents"—this Court's constitutional decisions "need not be cast in concrete." *Rocky River v. State Empl. Rels. Bd.*, 43 Ohio St. 3d 1, 6 (1989). Rather, when "judge-made law" interpreting the Constitution is "demonstrably wrong," it is "incumbent" on this Court "to make the necessary changes and yield to the force of better reasoning." *Id.* Simply put, *stare decisis* "'does not compel adherence to an incorrect

interpretation of the Constitution.'" *Bloom*, 2024-Ohio-5029 at ¶27 (quoting *State ex rel. Ohioans for Secure and Fair Elections v. LaRose*, 2020-Ohio-1459, ¶88 (Kennedy, J., concurring in judgment only)).

In this case, because *Canton* involves the meaning of Ohio's Constitution, normal *stare-decisis* considerations have less force. Regardless, *Canton* should fall under any conceivable *stare-decisis* framework.

A. The *Canton* test is demonstrably wrong.

Canton's general-law test is wrong—by a wide margin. The test says that a general law "must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." *Canton*, 2002-Ohio-2005, ¶21. This four-prong test does not capture the "original public meaning" of the phrase. *Contra State ex rel. Gatehouse*, 2025-Ohio-5243 at ¶17.

The problems start with *Canton*'s methodology. The Court in *Canton* made no serious attempt to discern how "a competent speaker of the English language" would have interpreted the phrase "general laws" at the time of the Home Rule Amendment's adoption in 1912. *Contra id.* It instead created the test by trying to reconcile nine decades' worth of disparate home-rule cases. *See Canton*, 2002-Ohio-2005 at ¶¶13–35. To make matters worse, the Court—with seemingly little thought as to the ramifications—phrased its four-prong test in the *conjunctive.* The Court thus turned

a loose compilation of remarks from past cases into a series of mandatory burdens that the State must satisfy in all general-law cases. *See id.* at ¶¶13–19, 21.

Canton's flawed methodology led to an incorrect result. As discussed at length above, in 1912, a general law meant a law that operates uniformly across the State. *Canton*'s four-part test adds several requirements that stretch well beyond that meaning. Take, for instance, *Canton*'s third and fourth prongs. Those prongs require that, to qualify as a general law, a statute "prescribe a rule of conduct upon citizens" rather than simply "limit[ing] legislative power of a municipal corporation." *Id.* at ¶21. Those requirements would have been entirely novel to Ohioans in 1912. Back then, general laws were the *constitutionally required* way by which the General Assembly set the boundaries of municipal power. *See* Ohio Const., art. XIII, §§1, 6; *State ex rel. Attorney Gen.*, 20 Ohio St. 18, syllabus ¶1; *above* 15–16. So confining "general laws" to rules for citizens—as opposed to municipalities—would have made no sense. Rather, convention delegates and voters in 1912 would have *expected* the General Assembly to use general laws to "grant or limit legislative power of a municipal corporation." *Contra Canton*, 2002-Ohio-2005 at ¶21.

Though more subtle, *Canton*'s requirement that a general law be part of a "comprehensive" regulatory scheme also breaks from original meaning. *Id.* That requirement implicitly invites courts to make policy calls about whether the General Assembly is doing enough to regulate a given field. *See id.* at ¶24 (holding that statutory provisions violated the Home Rule Amendment because Ohio was not doing enough to regulate manufactured homes). But, as understood in 1912, the phrase "general

law" had "nothing whatever to do with the policy, the justice, or the wisdom of" state regulations. *See Horstman*, 72 Ohio St. at 107. The phrase thus left the General Assembly with broad discretion to decide what level of regulation or freedom to allow in a given field.

The upshot is that there is no way to square *Canton*'s test with original meaning. The test greatly overcomplicates what "should be the simplest aspect" of a home-rule analysis. *Dayton*, 2017-Ohio-6909 at ¶96 (DeWine, J., dissenting).

B. The *Canton* test remains unworkable and unreliable.

1. The *Canton* test has had more than twenty years to percolate, and it has proven unworkable. Because the *Canton* test "invites judges to engage in standardless policymaking," *see State ex rel. Martens*, 2024-Ohio-5667 at ¶21, the test has led to "inconsistent" results, App.Op. ¶24. Sometimes the State may ban municipal regulation of a subject. *Cleveland Firearms*, 2010-Ohio-6318; *Am. Fin. Servs. Ass'n*, 2006-Ohio-6043. Other times it may not. *Cleveland v. State*, 2014-Ohio-86 ("*Cleveland Towing*"); *Canton*, 2002-Ohio-2005. Sometimes the Court encourages the General Assembly to "expressly signal" that the State intends "exclusivity" in an area. *See Mendenhall*, 2008-Ohio-270 at ¶34. Other times such expressions serve as fodder for declaring a statute unconstitutional. *See Cleveland Towing*, 2014-Ohio-86 at ¶16. Sometimes the Court reads a challenged statute in combination with other statutes on the subject. *Mendenhall*, 2008-Ohio-270 at ¶27. Other times it does not. *Cleveland Towing*, 2014-Ohio-86 at ¶16; *cf.* App.Op. ¶24. Often times, *Canton* glorifies form over substance. For example, statutes phrased in terms of citizens—rather than

municipalities—seem to fare better even if they accomplish the same thing. *See Dayton*, 2017-Ohio-6909 at ¶41 (French, J., concurring) (comparing *Canton* and *Mendenhall*).

Such inconsistency leaves Ohio's lower courts confused. The proceedings below show as much. The trial court, for example, openly criticized the "ad hoc" nature of this Court's home-rule cases. Trial Tr. 112 (May 17, 2024). As that court described it, current precedent "almost seems like it comes down to, Gee, what do we think is the best policy." *Id.* In a similar vein, the Tenth District thought cases gave "varying" messages about how to apply *Canton*. App.Op. ¶22. And the Tenth District viewed the fractured opinions from *Dayton*—this Court's most recent foray into *Canton*—as "largely eschewing" principles from earlier cases. App.Op. ¶24. "Without settled authority," the Tenth District "opt[ed]" for the path it thought best. App.Op. ¶24.

Unsurprisingly, the lack of clear guidance has also caused conflicts among the lower courts. In this case, the Tenth District struck down a statute blocking cities from regulating tobacco. And it did so *without* considering the challenged statute in combination with all state regulations of tobacco. App.Op. ¶25. Just eight days later, the Fourth District upheld a statute blocking cities from outlawing plastic shopping bags. *State v. Athens*, 2025-Ohio-2652 (4th Dist.). While noting mixed authority, the Fourth District acknowledged that it could not read the challenged statute in isolation when applying *Canton*. *Id.* at ¶¶19, 26–27, 29. Thus, after more than twenty years of *Canton*, lower courts still disagree about the test's basic mechanics.

This Court, for its part, has had to continually grapple with lingering home-rule confusion. Since 1912, this Court has considered a hundred cases or so presenting the question of "whether an enactment by the General Assembly overrides a municipal law." *Dayton*, 2017-Ohio-6909 at ¶55 (DeWine, J., dissenting). And since *Canton*, this Court has found it necessary to repeatedly revisit lower courts' *Canton*-based rulings. *See, e.g.*, *Dayton*, 2017-Ohio-6909 (lead op.); *Cleveland Towing*, 2014-Ohio-86; *Cleveland Firearms*, 2010-Ohio-6318; *Ohioans for Concealed Carry, Inc. v. Clyde*, 2008-Ohio-4605; *Am. Fin. Servs. Ass'n*, 2006-Ohio-6043.

Finally, confusion over *Canton* fuels constant litigation. Consider firearms. Time has clearly shown that Ohio municipalities—if left to their own devices—will impose myriad firearm regulations. *E.g.*, *Cleveland Firearms*, 2010-Ohio-6318 at ¶3; *Clyde*, 2008-Ohio-4605 at ¶18; *Buckeye Firearms Found., Inc. v. City of Cincinnati*, 2020-Ohio-5422, ¶1 (1st Dist.). As a result, the General Assembly enacted a statute blocking local firearm regulation. R.C. 9.68. Fifteen years ago, this Court said that was permissible under *Canton*. It specifically held that Ohio could "displace[] municipal firearm ordinances" without offending municipal home-rule authority. *Cleveland Firearms*, 2010-Ohio-6318 at ¶1. Nonetheless, relying on other home-rule cases, cities continue to pile their own firearms regulations on top of Ohio's. *E.g.*, *City of Columbus v. State*, 2023-Ohio-195, ¶17 (10th Dist.). Thus, Ohioans who seek to bear arms still risk a "confusing patchwork of" local requirements. *See Cleveland Firearms*, 2010-Ohio-6318 at ¶35.

2. *Canton*'s unpredictability also prevents justified reliance on *Canton*. Many people, no doubt, have an interest in the outcomes of these home-rules cases. After all, Ohio has over 900 municipalities. *See* Ohio Secretary of State: Local Government, https://ohioroster.ohiosos.gov/LocalGov.aspx. And home-rule disputes are not limited by subject. A clash between state and local power can instead arise in any context: from criminal laws for firearms, to licensing for private detectives, to regulations for tow trucks, to disposal of hazardous waste, to plastic bags at grocery stores. *See Cleveland Firearms*, 2010-Ohio-6318 at ¶35; *Ohio Ass'n of Private Detective Agencies v. City of N. Olmsted*, 65 Ohio St. 3d 242, 242 (1992); *Cleveland Towing*, 2014-Ohio-86 at ¶1; *Clermont Envtl. Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 45 (1982); *Athens*, 2025-Ohio-2652 at ¶4. The General Assembly has thus enacted statutes ensuring legal uniformity on many subjects ranging from auctioneering to pet stores. *E.g.*, R.C. 1.63(A) (loan collection); R.C. 9.68 (firearms); R.C. 956.23 (pet stores); R.C. 1315.30 (check cashing); R.C. 3736.021 (auxiliary containers); R.C. 4301.011 (alcohol); R.C. 4707.111 (auctioneering); R.C. 4775.11 (motor-vehicle repair); R.C. 4925.09 (transportation companies); R.C. 4798.03 (occupational regulations); R.C. 5321.20 (rental agreements). As a result, citizens and businesses need to know whether they can trust these state-uniformity statutes, or whether they must account for a patchwork of local schemes.

The problem is that no one on any side of these home-rule debates can confidently rely on *Canton*. Even after more than two decades, "neither cities nor the legislature can say with any particular degree of certainty—on any particular day—who can do

what." *Dayton*, 2017-Ohio-6909 at ¶55 (DeWine, J., dissenting). Because the *Canton* test is neither "clear" nor "easily applicable," it is not a standard on which "legitimate reliance interests" rest. *See South Dakota*, 585 U.S. at 186 (quotation omitted, alteration accepted).

One final matter before moving on. The original understanding of the Home Rule Amendment will no doubt be unwelcome to the plaintiff cities. But a focus on the desired powers of the cities versus the State is beside the point. "All political power is inherent in the people." Ohio Const., art. I, §2. The power granted by the people of Ohio through the Home Rule Amendment in 1912 is reflected in the meaning of the Amendment's words. That the judiciary over time usurped the people's power and added meaning that they did not intend is a miscarriage of direct democracy that this Court can, and should, remedy. The Home Rule Amendment was never intended to create independent city-states, impervious to the State that created them—or to the sovereign people who created them both.

III. The Tenth District's analysis of original meaning is unpersuasive.

Canton was, of course, binding precedent below. So if this Court overrules *Canton*, most of the Tenth District's analysis fades aways. But the Tenth District also suggested that, even putting "the *Canton* test aside," it would have concluded that the challenged statute "contravenes the original intent of the Home Rule Amendment." App.Op. ¶27. The court appreciated that general laws "operate uniformly throughout the state." *Id.* But the court went on to suggest that general laws also come with a

no-preemption rule: general laws, the court reasoned, cannot "regulate[] nothing yet seek to preempt [a] field." *Id.* On this last front, the Tenth District was mistaken.

Original-intent analysis. The Tenth District's original-intent analysis leaps from correct premises to an incorrect conclusion. The court was correct that, during the 1912 convention, delegates debated the words "affecting the welfare of the state as a whole." App.Op. ¶27; *see also Convention Debates* at 1313, 1439; *above* 24–25. The court was also correct that many delegates thought the phrase was unnecessary and did not add to the meaning of general laws. *E.g.*, *Convention Debates* at 1439. But after that, the Tenth District's analysis falls apart. With little discussion, the court assumed that because general laws address the general welfare of Ohio, they must require active regulation of a field rather than "preempt[ion]" of a field. App.Op. ¶27. That assumption does not withstand scrutiny. After all, one way the General Assembly can provide for the general welfare of Ohio is by *preventing* local police regulations that Ohio does not want.

Convention delegates certainly thought so. They openly recognized that, even with home rule, the State would be able to prohibit exercises of municipal police power on subjects important to the State. *Above* 22–24, 26. Professor Knight, for example, acknowledged when presenting the committee proposal that municipalities could be "forbidden to legislate on [a] particular phase of police regulation." *Convention Debates* at 1439. Towards the end of the debates, another delegate similarly explained that the proposal would allow a municipality "to do everything it is not prohibited from doing by general law." *Id.* at 1472. Recall also that, through

amendments, the delegates removed a clear-statement rule that favored municipalities. *Above* 26. That change made it *easier* for the State to override municipal power. In short, on matters "sufficiently marked and important to make" statewide legislation conceivable, the original meaning of "general laws" did *not* include a barrier to preemption. *See Horstman*, 72 Oho St. at 107, 109 (quotation omitted).

The Tenth District's reliance on other select passages from the convention debates fares no better. The court noted that, during parts of the convention, delegates spoke about municipalities being able to "add" their own regulations going "beyond" state regulations. *Convention Debates* at 1440. Such statements should be read in context. They involve discussions about what would happen when the State and localities both *affirmatively* regulated the same subject. In such situations, the delegates recognized that state regulations would set a floor that cities could go above. For example, a city that needed "very strict laws about sanitary plumbing" could impose its own affirmative standards so long as it did not "weaken" the State's requirements. *See Convention Debates* at 1440. But the delegates recognized that the State *also* had the option to simply create a conflict by forbidding, prohibiting, or denying municipal power. *E.g.*, *Convention Debates* at 1433, 1439, 1458, 1466, 1471–72, 1486.

A comparison to federal preemption law sharpens the point. Federal law can be "said to conflict with state law" for different reasons. *Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Sometimes, "a federal statute may expressly preempt state law." *Id.* at 203. Other times federal courts infer conflict when state law "makes compliance with a federal statute impossible." *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 780 (2019)

(plurality op.). State law and local ordinances can likewise be "said to conflict" in different ways. G*arcia*, 589 U.S. 191, 202. Sometimes the General Assembly creates a conflict by expressly announcing that it does not want municipalities acting in a given area. *See Convention Debates* at 1433, 1439. Other times a conflict occurs because it is impossible to comply with both sets of law at once. With that distinction in mind, return to Tenth District's analysis. The analysis repurposes discussion about when conflict by *impossibility* would arise to suggest that delegates barred the State from *expressly* announcing conflict. *See* App.Op. ¶28. But a full reading of the convention debates shows that the delegates also thought that the State *could* expressly announce a conflict by forbidding municipal action on a given subject. *See Convention Debates* at 1433, 1439, 1458, 1466, 1471–72, 1486.

Historical implausibility. The Tenth District's historical view is also quite unrealistic when one considers the legal backdrop against which Ohioans adopted the Home Rule Amendment. Courts do not usually read legal texts to "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). For example, when this Court reads the General Assembly's work, it typically assumes that an amendment to the law retains settled legal principles "unless the language used in" the amendment "clearly shows" the desire for a profound change. *See Carrel v. Allied Prods. Corp.*, 78 Ohio St. 3d 284, 287 (1997). The Court should use the "same rule[] when construing the Constitution." *Knab*, 2020-Ohio-5219 at ¶22.

A decision from the Golden State is illustrative. *See Cal. Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 260–61 (2011). There, a party argued that amendments

to the California Constitution—made in 2004 and 2008—implicitly changed political subdivisions from a "statutory creation" into a constitutional one. 53 Cal. 4th at 260. California's high court found the argument "unusual in the extreme." *Id.* The argument amounted to "a profound change in the structure of state government." *Id.* The Supreme Court of California rejected the argument. It did not think California voters would have "adopt[ed] such a fundamental change only by way of implication." *Id.*

Return, then, to the "the goal" of Ohio's Home Rule Amendment. *See Knab*, 2020-Ohio-5219 at ¶22. The "main thing" Ohioans wanted to do was to "get away" from the Dillon rule's strict presumption against municipal power. *See Convention Debates* at 1433; *see also id.* at 1439–41, 1447, 1456–58, 1461, 1471. Before 1912, Ohio courts started with the presumption that municipalities lacked authority. *Xenia*, 32 Ohio St. at 465. Ohioans wanted to shift the presumption to allow municipalities to do that which was not "forbidden." *See Convention Debates* at 1439. But a no-preemption rule would be a far more extreme move than simply reversing the Dillon rule. *See* App.Op. ¶27. Under the Tenth District's logic, the Home Rule Amendment did not just change a *presumption*; it eliminated the State's *ability* to use its own police powers as a check on regulation by municipalities. The Court should not make that incredible leap without a clear statement. *See Carrel*, 78 Ohio St. 3d at 287. And the Home Rule Amendment's text does not provide one: instead, the Tenth District's position seems to spring from some subtle, secret meaning within "general laws" that voters in 1912 would not have understood. *Contra Heller*, 554 U.S. at 576–77.

Appellant State of Ohio's Proposition of Law No. 2:

When applying the third and fourth prongs of the Canton *test, courts must consider all Ohio statutes on the relevant subject, not just the challenged statute in isolation.*

Because the *Canton* test breaks sharply from original meaning, the Court should simply abandon the test rather than trying some half measure or partial fix. But if the Court disagrees, it should at least clarify its doctrine. In particular, the Court should make crystal clear that a proper application of the *Canton* test requires courts to consider the challenged statute together with all Ohio statutes on a given topic.

I. The challenged statute survives a proper application of *Canton*.

Under the *Canton* test, a law qualifies as a general law if it meets four requirements. Specifically, the test says that a general law must (1) "be part of a statewide and comprehensive legislative enactment," (2) "apply to all parts of the state alike and operate uniformly throughout the state," (3) set forth police-power regulations rather than "only" granting or limiting municipalities' "legislative power," (4) " prescribe a rule of conduct upon citizens generally." *Canton*, 2002-Ohio-2005 at ¶21.

The result of this test often comes down to how far a court is willing to zoom out when reading Ohio law. Many of this Court's rulings teach that, when deciding if a challenged statute or provision is a general law, courts should consider all statutes relating to a regulated subject together—that is, *in pari materia*—rather than just considering the challenged statute or provision in isolation. *E.g.*, *Cleveland Firearms*, 2010-Ohio-6318 at ¶29; *Mendenhall*, 2008-Ohio-270 at ¶27; *N. Olmsted*, 65 Ohio St. 3d at 245; *Clermont Envtl. Reclamation Co.*, 2 Ohio St. 3d at 48. But the Court has not always been consistent. *Cleveland Towing*, 2014-Ohio-86 at ¶16.

The *in-pari-materia* approach to *Canton* is the better one. Indeed, three of *Canton*'s four prongs make little sense unless a court is willing to consider Ohio law as a whole. Begin with *Canton*'s first prong. A court obviously cannot tell if a challenged statute or provision is "*part* of a … comprehensive legislative enactment," *Canton*, 2002-Ohio-2005 at ¶21 (emphasis added), without looking to the "entire legislative scheme," *Cleveland Firearms*, 2010-Ohio-6318 at ¶29. And looking to the "entire legislative scheme" requires a court to review all "other statutes regulating the same subject" regardless of where they are located in the Revised Code. *See id.* Otherwise, home rule would become a form-over-substance test about how "various code chapters" are organized. *Contra id.* at ¶21.

Canton's third and fourth prongs also require a comprehensive reading of Ohio law. Again, those prongs distinguish between statutes that "prescribe a rule of conduct upon citizens" and statutes that "purport *only* to grant or limit" municipal power. *Canton*, 2002-Ohio-2005 at ¶21 (emphasis added). In other words, those prongs require that Ohio affirmatively regulate a field itself rather than simply telling municipalities not to regulate. Reviewing challenged statutes or provisions in isolation distorts that inquiry. Read with enough isolation, a statutory passage blocking municipal action will always (or at least usually) appear to be simply limiting municipal power. *See N. Olmsted*, 65 Ohio St. 3d at 245 (recognizing that an isolated reading of the challenged provision may give the appearance that it is merely blocking local police power). To get a full picture of how Ohio is regulating a field, one must zoom out and consider all that Ohio is doing.

Remember also that regulatory decisions can be either permissive or restrictive in their nature. Ohio can establish rules of conduct for its citizens by *either* "forbidding an act" *or* "permitting an act." *Cincinnati v. Baskin*, 2006-Ohio-6422, ¶17. For example, the State can limit cities' ability to change the State's speed limits. *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 85 (1929). While such a law limits municipal power, it also permits private conduct by ensuring citizens may travel certain speeds without local interference. *See id.* at 86. This possibility that Ohio is trying to *permit* citizen conduct also favors reading Ohio law as a whole. Unless a court reads all "statutes regulating the same subject," it may not know whether Ohio is blocking municipality authority *in order to* permit a broad range of citizen conduct. *See Cleveland Firearms*, 2010-Ohio-6318 at ¶¶29, 35.

In this case, viewing the full picture, R.C. 9.681 satisfies the *Canton* test. Ohio comprehensively regulates the field of tobacco in many ways. *Above* 3–4. Among other things, Ohio law sets rules of conduct governing how Ohioans may buy, sell, and use tobacco. *E.g.*, R.C. 2151.87, 2927.02(B)(1), 3794.02.

When read in this broader context, the challenged statute clears *Canton*'s various hurdles. The statute is part of a comprehensive statutory scheme regulating tobacco. The statute applies throughout Ohio. The statute does more than just limit municipal authority; it allows citizens and businesses to engage in any tobacco-related conduct that state and federal law do not prohibit. In other words, the challenged statute "prescrib[es] a rule of conduct" by "permitting" certain behaviors. *See Baskin*, 2006-Ohio-6422, ¶17. And it relatedly prevents citizens and businesses from having to

"face a confusing patchwork of licensing requirements, possession restrictions, and criminal penalties as they travel from one jurisdiction to another." *Cleveland Firearms*, 2010-Ohio-6318 at ¶35.

II. The Tenth District erred in applying *Canton*.

The Tenth District's application of *Canton* veered off course. Most relevant, the court said that, in applying *Canton*, it did not need to consider the challenged statute in combination with other tobacco laws. The court reasoned that reading tobacco statutes collectively was unnecessary because the challenged statute's meaning was unambiguous. App.Op. ¶¶22–23, 25. This logic improperly conflates statutory interpretation with home-rule analysis.

When interpreting statutes, courts often look to "all statutes relating to the same general subject matter" to ensure they are properly reading the statute in question. *See In re Duke Energy Ohio, Inc.*, 2017-Ohio-5536, ¶27. But if the meaning of the relevant statute is not in doubt, it is unnecessary to do so. *Id.* Thus, when the central issue of a case involves statutory interpretation, a court might not need to scour all related statutes in the Revised Code to understand a given statute.

For a home-rule analysis, however, the reason for considering other statutes is different. The point is not to interpret the challenged statute. The point is to ensure that a court understands how the challenged statute fits within Ohio's entire regulatory scheme covering a subject. *See Cleveland Firearms*, 2010-Ohio-6318 at ¶29; *N. Olmsted*, 65 Ohio St. 3d at 245. Thus, the fact that the Tenth District had no trouble

interpreting R.C. 9.681 was not a proper reason for the court to ignore other tobacco-related laws when applying *Canton*. *Contra* App.Op. ¶¶22–23, 25.

One final issue warrants mention. At times, the Tenth District seemed to stray into matters of policy. For example, the court suggested that Ohio is not doing enough to protect people "from the lethal scourge of tobacco use." App.Op. ¶28. And, at the outset of its opinion, the court emphasized the Governor's policy concerns about flavored tobacco. App.Op. ¶1. But such policy considerations are irrelevant here. *See State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485, ¶33 (lead op.). Home-rule analysis does not turn on whether there is "more" the State could be doing to regulate a field. *Cleveland Firearms*, 2010-Ohio-6318 at ¶28. The phrase "general laws" is not an invitation for courts to critique "the policy, the justice, or the wisdom of" state laws. *See Horstman*, 72 Ohio St. at 107. And regardless, while muscular local power might sound reasonable (or even desirable), it is often disruptive to the economy, which grows more complex over time. For Ohio's economy to thrive, and for Ohioans to fully understand and exercise their freedoms, the State must be able to set uniform systems of regulation without local interference.

CONCLUSION

For the above reasons, the Court should reverse the Tenth District's decision.

Respectfully submitted,

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APPENDIX

[Cite as *Columbus v. State*, 2025-Ohio-2408.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus et al.,	:	
Plaintiffs-Appellees,	:	
v.	:	No. 24AP-333 (C.P.C. No. 24CV-2865)
State of Ohio,	:	(REGULAR CALENDAR)
Defendant-Appellant,	:	
Ohio Department of Health et al.,	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on July 8, 2025

On brief: *Zach Klein*, City Attorney, *Richard N. Coglianese*, *Matthew D. Sturtz*, *Aaron D. Epstein*, and *Micah L. Berman*, for plaintiff-appellee City of Columbus. **Argued:** *Richard N. Coglianese*.

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APPEAL from the Franklin County Court of Common Pleas

LELAND, J.

{¶ 1} After his second veto of R.C. 9.681, Mike DeWine, Governor of Ohio, expressed his aversion to the General Assembly's attempt to preclude all Ohio municipalities from regulating tobacco:

> In the absence of an effective and comprehensive statewide flavored tobacco ban (including menthol) — which is this administration's preferred policy approach — local government bans are essential because they reduce access to flavored tobacco and nicotine alternative products and interrupt the cycle of addiction. The removal of local regulation would encourage youth nicotine addiction and immediately undo years of progress to improve public health, which is why a similar provision was previously vetoed.

(Am. Compl. at 71.) This sort of interaction between state and local regulatory power has long been understood. Horace G. Redington, a delegate to the 1912 Constitutional Convention of Ohio, succinctly explained this interplay to the convention: "In case the state neglects to pass proper police and sanitary regulations, the city may do so, and if the state then passes laws beyond and more strict than the city laws, the city laws are nullified." 2 Smith, *Proceedings and Debates of the Constitutional Convention of the State of Ohio*, 1468 (1913). In overriding the governor's veto and enacting R.C. 9.681, the General Assembly means to preempt local regulation of tobacco.

{¶ 2} Defendant-appellant State of Ohio seeks reversal of a trial court order finding R.C. 9.681 violative of Article XVIII, Section 3 of the Ohio Constitution. Along with the cities of Athens, Barberton, Bexley, Cincinnati, Cleveland, Dublin, Gahanna, Grandview Heights, Heath, Hilliard, Kent, North Ridgeville, Oberlin, Oxford, Reynoldsburg,

Springfield, Toledo, Upper Arlington, Whitehall, and Worthington, plaintiff-appellee City of Columbus (hereinafter referred to as "Columbus") contends its ordinance banning the sale of flavored tobacco products is a valid exercise of its home rule authority.

I. Facts and Procedural History

{¶ 3} On December 12, 2022, Columbus passed Ordinance 3253-2022 ("ordinance"). The ordinance authorized the Columbus Department of Public Health to enforce the city's tobacco laws and health code, established a system of civil penalties including fines and license revocation for violating tobacco regulations, and banned the sale of flavored tobacco products. Columbus set January 1, 2024 as the effective date of its sales ban. The ordinance cited the need to protect children from the harmful and addictive effects of flavored tobacco products and noted such products disproportionately affect black smokers. Columbus asserted it passed this ordinance to protect the health, safety, and welfare of its residents. The other plaintiffs-appellees likewise passed ordinances regulating tobacco (hereinafter Columbus and its co-plaintiffs collectively referred to as "appellees").

{¶ 4} Just two days after Columbus passed its ordinance, the Senate Ways and Means Committee on December 14, 2022 amended H.B. No. 513 to enact a new section of law in the Revised Code, R.C. 9.681, to prohibit all local regulation of tobacco products. The General Assembly passed Sub.H.B. No. 513 that same day, December 14, 2022. On January 5, 2023, the governor vetoed the bill. The governor's veto message explained:

> Increased tobacco usage is also known as a cause of increased health care costs, including health care costs paid for by the taxpayers of the State of Ohio.
>
> A local government that bans flavored tobacco products, that are often marketed specifically to appeal to youth, may be doing so to discourage youth tobacco use. . . . Flavors, including menthol, help mask the harshness of tobacco making it easier for kids to become addicted.

(June 5, 2023 Veto Message.) On June 30, 2023, the General Assembly passed Am.Sub.H.B. No. 33, a budget bill that included R.C. 9.681's prohibition on local regulation of tobacco products. On July 3, 2023, the governor again vetoed the R.C. 9.681 portion of the bill. However, by a House vote on December 13, 2023 and a Senate vote on January 24, 2024, the General Assembly elected to override the governor's second veto of R.C. 9.681.

{¶ 5} The text of R.C. 9.681 provides as follows:

> (A) As used in this section, "tobacco product" and "alternative nicotine product" have the same meanings as in section 2927.02 of the Revised Code.
>
> (B) The regulation of tobacco products and alternative nicotine products is a matter of general statewide concern that requires statewide regulation. The state has adopted a comprehensive plan with respect to all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products. No political subdivision may enact, adopt, renew, maintain, enforce, or continue in existence any charter provision, ordinance, resolution, rule, or other measure that conflicts with or preempts any policy of the state regarding the regulation of tobacco products or alternative nicotine products, including, without limitation, by:
>
> (1) Setting 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;
>
> (2) Lowering or raising an age requirement provided for in state law in connection with the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products or alternative nicotine products;
>
> (3) Prohibiting an employee eighteen years of age or older of a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products or alternative nicotine products from selling tobacco products or alternative nicotine products;
>
> (4) Prohibiting an employee eighteen years of age or older of a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products or alternative nicotine products from handling tobacco products or alternative nicotine products in sealed containers in connection with manufacturing, storage, warehousing, placement, stocking, bagging, loading, or unloading.

> (C) In addition to any other relief provided, the court shall 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.
>
> (D) The general assembly finds and declares that this section is part of a statewide and comprehensive legislative enactment regulating all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products. The general assembly further finds and declares that the imposition of tobacco product and alternative nicotine product regulation by any political subdivision is a matter of statewide concern and would be inconsistent with that statewide, comprehensive enactment. Therefore, regulation of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products is a matter of general statewide concern that requires uniform statewide regulation. 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.
>
> (E) This section does not prohibit a political subdivision from levying a tax expressly authorized by state law, including the taxes authorized under Chapters 5739. and 5741. or sections 5743.021, 5743.024, 5743.026, 5743.321, 5743.323, and 5743.324 of the Revised Code.

{¶ 6} On April 9, 2024, appellees filed a complaint challenging the constitutionality of R.C. 9.681 and seeking a temporary restraining order, a preliminary injunction, permanent injunctive relief, and a declaratory judgment. Appellees filed an amended complaint on May 9, 2024. The first four causes of action in the amended complaint alleged the state law violates Article XVIII, the Home Rule Amendment to the Ohio Constitution. The fifth cause of action asserted R.C. 9.681 conflicts with a contract between the Ohio Department of Health and the Columbus Department of Public Health. The sixth cause of action claimed R.C. 9.681 as it relates to Am.Sub.H.B. No. 33, the biennial budget bill, runs afoul of the "one-subject" rule of Article II, Section 15(D) of the Ohio Constitution. Lastly,

the seventh and eighth causes of action stated R.C. 9.681 contradicts equal protection of the law as guaranteed in Article I, Section 2 of the Ohio Constitution.

{¶ 7} On April 19, 2024, the trial court held a hearing on appellees' request for a temporary restraining order. The court by oral pronouncement granted the temporary restraining order, thereby prohibiting the state from enforcing R.C. 9.681 pending a full trial on the merits. On May 15, 2024, the state filed a Civ.R. 12(B)(6) motion to dismiss and a motion in limine with the trial court requesting the preclusion of all witness testimony and evidence at trial. On May 16, 2024, the state filed a second motion in limine to exclude the expert testimony of Dr. Robert Crane.

{¶ 8} The trial court held a bench trial on May 17, 2024. At the start of trial, the court overruled both of the state's motions in limine but noted the state's standing objection to the presentation of any evidence. Appellees called four witnesses, with testimony centering on the harmful impact of tobacco on the city's residents and how local regulation complements rather than detracts from the state's regulatory scheme. The state called no witnesses. At the close of trial, the court issued a ruling from the bench. It largely overruled the state's Civ.R. 12(B)(6) motion to dismiss, but granted the motion to dismiss as to the state's co-defendants Dr. Bruce Vanderhoff and the Ohio Department of Health. The court also ruled on the merits in favor of the state on causes of action five, six, seven, and eight, thereby dismissing those counts. Combining causes of action one, two, three, and four, the trial court determined R.C. 9.681 is not a general law and that it therefore unconstitutionally infringes on the home rule powers of appellees. The court granted the motion for permanent injunction on the state's enforcement of R.C. 9.681 against appellees.

{¶ 9} The state timely appealed.

II. Assignments of Error

{¶ 10} The state assigns the following as errors for our review:

> [I.] The Trial Court erred in finding R.C. 9.681 unconstitutional due to contravention of the Home Rule Amendment of the Ohio Constitution.
>
> [II.] The Trial Court erred in denying Appellant's two motions in limine and permitting Appellees' witnesses to testify at trial.

III. Analysis

A. First Assignment of Error

{¶ 11} The state in its first assignment of error disputes the trial court's holding that R.C. 9.681 contravenes the Home Rule Amendment of the Ohio Constitution.

{¶ 12} The Ohio Constitution vests the legislative power of the state in the General Assembly. Ohio Const., art. II, § 1; *Dayton v. State*, 2017-Ohio-6909, ¶ 29. "When considering the constitutionality of a statute, this court 'presume[s] the constitutionality of the legislation, and the party challenging the validity of the statute bears the burden of establishing beyond a reasonable doubt that the statute is unconstitutional.' " *Dayton* at ¶ 12, quoting *Wilson v. Kasich*, 2012-Ohio-5367, ¶ 18. Appellees, then, bear the burden of proof in this case. *Id.*, citing *Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 10 (1989).

{¶ 13} At the same time, the Ohio Constitution grants municipalities independent authority of their own. The Home Rule Amendment provides that "[s]ubject to the requirements of Section 1 of Article V of this constitution, municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Const., art. XVIII, § 3. To determine the exact contours of this constitutional home rule authority, the Supreme Court of Ohio applies the framework of analysis espoused in *Canton v. State*, 2002-Ohio-2005. The application of the *Canton* test factors, however familiar, is not a rote exercise. *Canton*'s analysis is rooted in the text of Article XVIII, Section 3 and consolidates nine decades of case law discerning the meaning and function of the Home Rule Amendment. The *Canton* test, as reordered, asks "whether (1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute." *Mendenhall v. Akron*, 2008-Ohio-270, ¶ 17; *see Canton* at ¶ 9.

{¶ 14} The first question is whether the ordinance is an exercise of police power. Whereas the General Assembly may not constrain a municipality's exercise of self-government authority, a city's use of its police power could be limited by a conflicting and general state law. *See Am. Fin. Servs. Assn. v. Cleveland*, 2006-Ohio-6043, ¶ 23 ("If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-

government within its jurisdiction."). Police power is an inherent sovereignty the government may "exercise whenever public policy in a broad sense demands, for the benefit of society at large, regulations to guard its morals, safety, health, order, or to insure in any respect such economic conditions as an advancing civilization of a highly complex character requires." *Miami Cty. v. Dayton*, 92 Ohio St. 215, 223-24 (1915). In other words, "the police power allows municipalities to enact regulations . . . to protect the public health, safety, or morals, or the general welfare of the public." *Marich v. Bob Bennett Constr. Co.*, 2008-Ohio-92, ¶ 11, citing *Downing v. Cook*, 69 Ohio St.2d 149, 150 (1982).

{¶ 15} Secondly, courts determine whether the state statute is a general law. The Supreme Court once declared it to be necessary but not sufficient to define a general law as one that "operates uniformly throughout the state." *Youngstown v. Evans*, 121 Ohio St. 342, 345 (1929). Instead, it adopted a more fulsome definition of a general law as one that "prescrib[es] a rule of conduct upon citizens generally." *Id.* That same court excluded from its understanding of general laws those imposing "a limitation upon law making by municipal legislative bodies." *Id.* It even envisioned an "extreme case" wherein a state law "provided for a complete prohibition upon municipal legislation" and concluded such a law would "manifestly . . . not be effective to take away the power conferred upon municipalities by the plain provisions of the Constitution." *Id.* at 346. In a later case, the Supreme Court defined "general laws" as "statutes setting forth police, sanitary or other 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 v. Robinson*, 1 Ohio St.2d 113, 118 (1965). The Supreme Court expounded that sections of law "excis[ing] certain of the police powers of local government that have been granted to municipalities by the Constitution . . . are not general laws." *Garcia v. Siffrin Residential Assn.*, 63 Ohio St.2d 259, 271 (1980). "General laws are those enacted by the General Assembly to safeguard the peace, health, morals, and safety and to protect the property of the people of the state." *Linndale v. State*, 85 Ohio St.3d 52, 54 (1998). Consistent with the Supreme Court's nine decades of definitions and applications of the term "general laws" in Article XVIII, Section 3 of the Ohio Constitution, the Supreme Court articulated the *Canton* general law test:

> [T]o 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.

Canton at ¶ 21. "In determining whether a statute constitutes a 'general law' for purposes of the Home Rule Amendment, [the Supreme Court] has consistently applied the four requirements laid out in *Canton*." *Dayton*, 2017-Ohio-6909, at ¶ 15, quoting Ohio Const., art. XVIII, § 3.

{¶ 16} Finally, courts query whether the ordinance conflicts with the statute. A state law prevails over a local ordinance only if the police powers employed by the municipality conflict with the police powers exercised by the state. To determine "whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." *Struthers v. Sokol*, 108 Ohio St. 263 (1923), paragraph two of the syllabus, quoting Ohio Const., art. XVIII, § 3. "No real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa. There can be no conflict unless one authority grants a permit or license to do an act which is forbidden or prohibited by the other." *Id.* at 268. The Supreme Court still employs this conflict test. *See, e.g., Newburgh Hts. v. State*, 2022-Ohio-1642, ¶ 29.

{¶ 17} We now proceed to apply the *Canton* test to R.C. 9.681 and the Columbus ordinance. As to the first question, the parties agree the ordinance here is a police power regulation rather than an act of local self-government. *See* Ohio Const., art. XVIII, § 3. The ordinance regulates flavored tobacco products with the stated goal of protecting the health of the city's residents. Accordingly, we find the ordinance is an exercise of the city's police power.

{¶ 18} Next, we examine whether R.C. 9.681 is one of the state's "general laws." Ohio Const., art. XVIII, § 3. The relevant text of the Home Rule Amendment is straightforward: "municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Const., art. XVIII,

§ 3. Before the adoption of this provision, the General Assembly determined the bounds of municipalities' regulatory authority. Our modern constitutional order deliberately abandoned this antiquated state of affairs. Ever since the adoption of the Home Rule Amendment in 1912, "[t]he power of any Ohio municipality to enact local police regulations is no longer dependent upon any legislative grant thereof . . . [t]hat power is now derived directly from [Article XVIII, Section 3]." *W. Jefferson* 1 Ohio St.2d at 115. "The General Assembly cannot withdraw from municipalities powers expressly conferred upon them by the Constitution." *Akron v. Scalera*, 135 Ohio St. 65, 66 (1939); *see Fondessy Ents., Inc. v. Oregon*, 23 Ohio St.3d 213, 216 (1986). "A statement by the General Assembly of its intent to preempt a field of legislation . . . does not trump the constitutional authority of municipalities to enact legislation pursuant to the Home Rule Amendment." *Am. Fin. Servs. Assn.*, 2006-Ohio-6043, at ¶ 31.

{¶ 19} The parties focus on prongs three and four of the *Canton* general law test, and our analysis will do the same. To be a general law, R.C. 9.681 must "(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." *Canton*, 2002-Ohio-2005, at ¶ 21.

{¶ 20} R.C. 9.681(B) states "[t]he regulation of tobacco products and alternative nicotine products is a matter of general statewide concern that requires statewide regulation." Rather than implementing any such statewide regulation of tobacco, R.C. 9.681(B) proclaims "[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." Of course, the Home Rule Amendment already bars municipal regulations that conflict with the general laws of the state. *See* Ohio Const., art. XVIII, § 3. The statute's concept of a conflict between an ordinance regulating tobacco and the state's tobacco laws, apparently, is the existence of an ordinance regulating tobacco: the General Assembly "declares that the imposition of tobacco product and alternative nicotine product regulation by any political subdivision is a matter of statewide concern and would be inconsistent with that statewide, comprehensive enactment." R.C. 9.681(D). Congruent with that view, R.C. 9.681(D) manifests "the intent of the general assembly to preempt political subdivisions from the regulation of tobacco products and

alternative nicotine products." The statute nevertheless permits political subdivisions to levy taxes "expressly authorized by state law." R.C. 9.681(E).

{¶ 21} R.C. 9.681 enacts no substantive regulation of tobacco. Although it directs courts to "award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance," all this provision does is place a bounty on any local regulation of tobacco and thereby encourage private enforcement of its preemption claim. R.C. 9.681(C). A bounty provision could hardly be considered a regulation of tobacco. R.C. 9.681 almost exclusively purports to deprive municipalities of their constitutional authority to implement police power regulations of tobacco. The only exception to the statute's derogation of municipal power is the provision claiming to permit municipalities to levy certain taxes—a power already granted by the Home Rule Amendment. *See* R.C. 9.681(E). In the context of the *Canton* general law test, R.C. 9.681 plainly fails to "set forth police, sanitary, or similar regulations," and it "purport[s] only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations." *Canton* at ¶ 21. Furthermore, the law evidently fails to "prescribe a rule of conduct upon citizens generally." *Id.* Considered on its own merits, R.C. 9.681 is not a general law.

{¶ 22} Complicating this analysis, case law has occasionally and to varying degrees incorporated the concept of *in pari materia* into *Canton* general law analyses. *In pari materia* is a tool of statutory construction. As pronounced by Chief Justice John Marshall of the Supreme Court of the United States, "[t]he intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction." *United States v. Wiltberger*, 18 U.S. 76, 95-96 (1820). The Supreme Court of Ohio later concurred with this principle: "When there is no ambiguity, we must abide by the words employed by the General Assembly and have no cause to apply the rules of statutory construction." (Citations omitted.) *State ex rel. Clay v. Cuyahoga Cty. Med. Examiner's Office*, 2017-Ohio-8714, ¶ 15. In fact, courts overstep their authority when they apply the tools of statutory interpretation to an unambiguous statute. *Id.* Like other canons of statutory construction, the *in pari materia* rule applies only if the text of a statute elicits doubt or ambiguity as to its meaning. *Id.* at ¶ 17. A statute is ambiguous if it is " 'capable of bearing more than one meaning.' " *Id.*, quoting *Dunbar v. State*, 2013-Ohio-2163, ¶ 16.

{¶ 23} R.C. 9.681 is unambiguous. The General Assembly is entirely forthright as to its purpose in passing the law: "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." R.C. 9.681(D). Nor is there doubt as to the definitions of the key terms "tobacco products" or "alternative nicotine products"—the statute explains they have the "same meanings as in section 2927.02 of the Revised Code." R.C. 9.681(A).

> "Tobacco product" means any product that is made or derived from tobacco or that contains any form of nicotine, if it is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, an electronic smoking device, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" also means any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, blunt or hemp wraps, and liquids used in electronic smoking devices, whether or not they contain nicotine. "Tobacco product" does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

R.C. 2927.02(A)(7). " 'Alternative nicotine product' means . . . an electronic smoking device, vapor product, or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving, or inhaling." R.C. 2927.02(A)(2)(a). The meaning of "alternative nicotine product" does not include "(i) Any cigarette or other tobacco product; (ii) Any product that is a 'drug' as that term is defined in 21 U.S.C. 321(g)(1); (iii) Any product that is a 'device' as that term is defined in 21 U.S.C. 321(h); [or] (iv) Any product that is a 'combination product' as described in 21 U.S.C. 353(g)." R.C. 2927.02(A)(2)(b). Thus, the meaning of R.C. 9.681 is understood by reading the words plainly written in law. The text is not " 'capable of bearing more than one meaning.' " *Clay* at ¶ 17, quoting *Dunbar* at ¶ 16. To reiterate, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Connecticut Natl. Bank v. Germain*, 503 U.S. 249, 253 (1992). The United States Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.' " (Citations omitted.) *Id.* at 253-54, quoting *Rubin v.*

United States, 449 U.S. 424, 430 (1981); *see also Gabbard v. Madison Local School Dist. Bd. of Edn.*, 2021-Ohio-2067, ¶ 27. By the well-established judicial philosophy of both the federal and state supreme courts, a statute drafted with definitive language and unmistakable intent—such as R.C. 9.681—ought not be subject to further interpretation.

{¶ 24} Even if we were to read an unambiguous statute like R.C. 9.681 *in pari materia*, the inconsistent case law on the matter raises more questions than it answers. This is especially so when utilized in the context of the third and fourth prongs of the *Canton* general law test. At times, the court has directly required a statute be read *in pari materia*. *See, e.g.*, *Cleveland v. State*, 2010-Ohio-6318, ¶ 29 ("[T]he court of appeals erred in considering R.C. 9.68 in isolation rather than as part of Ohio's comprehensive collection of firearm laws."). More recent cases have strayed from this directive. In *Cleveland v. State* (unrelated to the 2010 case of the same name), the court considered whether R.C. 4921.25 was a general law. *See Cleveland v. State*, 2014-Ohio-86. The two-sentence statute provided as follows:

> Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, that is engaged in the towing of motor vehicles is subject to regulation by the public utilities commission as a for-hire motor carrier under this chapter. Such an entity is 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.

Id. at ¶ 5, quoting R.C. 4921.25. The court read R.C. 4921.25 *in pari materia* under the third prong of the *Canton* general law test by concluding the law was an exercise of the state's police power because it "plac[ed] towing companies under the regulation of the PUCO [Public Utilities Commission of Ohio] — including but not limited to the PUCO's traffic regulations governing for-hire motor carriers." *Id.* at ¶ 13. Despite this conclusion, the court proceeded to find the second sentence of the statute "violates the third prong of the *Canton* test by purporting to limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations." *Id.* at ¶ 16. The decision did not explain why the statute as a whole was read *in pari materia*, while the second sentence was interpreted on its own merit. *See also Dayton*, 2017-Ohio-6909, at ¶ 20, 45 (reading contested statutes in isolation and largely eschewing an *in pari materia* approach). Without settled authority

on whether, when, and how to apply the *in pari materia* doctrine in home rule cases, this court opts to spare statutory construction until it becomes necessary to "say what the law is" and discern an ambiguous statute. *State v. Parker*, 2019-Ohio-3848, ¶ 31.

{¶ 25} Our decision to forgo construing R.C. 9.681 as one overarching statute in combination with all state regulations of tobacco is therefore valid, and, in fact, required by the fundamental limits of judicial power. Judges are not legislators, but we would risk usurping the legislative power by sidestepping the clear meaning of a statute and interpreting language which needs no interpretation. Accordingly, because the text of R.C. 9.681 fails the third and fourth prongs of the *Canton* general law test, we maintain it is not a general law.

{¶ 26} Having determined R.C. 9.681 is not a general law, the question of whether the Columbus ordinance and R.C. 9.681 conflict is moot. Thus, pursuant to the Home Rule Amendment, we deem R.C. 9.681 unconstitutional for impermissibly curtailing the independent constitutional authority of municipalities to regulate tobacco.

{¶ 27} Even if we were to put the *Canton* test aside, R.C. 9.681 contravenes the original intent of the Home Rule Amendment. From the time of the 1912 constitutional convention, it has been understood that a general law is one that "affect[s] the welfare of the state as a whole under the police power." *Smith, Proceedings and Debates of the Constitutional Convention of the State of Ohio*, at 1442. In fact, the text of the amendment as it was initially considered included a clause that modified the term "general laws": "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*." (Emphasis added.) *Id.* at 1439. This clause was removed seemingly because some delegates viewed the language as "surplusage," given that the term "general laws" on its own was seen as description enough. *Id.* at 1439, 1474. As one delegate noted, "[y]ou can not have a law unless it does affect the general welfare of the state." *Id.* at 1442. Thus, a general law must both operate uniformly throughout the state and exercise the police, sanitary, or other like regulatory powers of the state. In our case, R.C. 9.681 regulates nothing yet seeks to preempt the field of tobacco policy. This sort of law is and always was invidious to the text and spirit of the Home Rule Amendment.

{¶ 28} The Home Rule Amendment was also designed to protect the right of municipalities to address their particular and local needs. Then as now, the problems that

arise in densely populated cities may vary greatly from those in sparsely populated towns. For example, the delegates considered policies on plumbing and quarantine. Whereas rural sectors of the state may not need such strict regulations in these departments, cities would have a far greater incentive to pass such regulations in order to protect the health of their residents. The delegates discussed how the Home Rule Amendment would permit municipalities to "add to what the state has enacted under the police power . . . because the needs of the municipality are beyond the needs of the state as a whole." *Smith* at 1440. The Home Rule Amendment "does not subtract a particle from the police power of the state, but does give the municipality unquestioned right for local purposes to go further than the general assembly is willing to use its powers." *Smith* at 1440. If the General Assembly did go further than the municipalities in its exercise of police powers, then "that would supersede the local statutes." *Id.* at 1440. Here, appellees passed ordinances to protect their residents from illness and death caused by the consumption of tobacco products. The Home Rule Amendment was adopted to allow municipalities to do precisely this sort of legislating, but the General Assembly through R.C. 9.681 claims the exclusive power to regulate tobacco. If this statute were enforced as written, the state could move to strike down as illegal any city ordinance regulating tobacco. Cities would lose the power to enforce their tobacco laws, both criminal and civil. They would lose authority to keep city parks free of tobacco. They could no longer regulate tobacco marketing. Licensing and zoning of convenience stores that sell tobacco products might be invalidated. Cities could do nothing to stem the sale of flavored tobacco products, no matter the addictive or mortal effects of the tobacco industry's targeted advertising to children or other demographic groups. Although the state retains great discretion in its authority to regulate tobacco, R.C. 9.681 exceeds this discretion by excluding municipalities from issuing their own rules and regulations. The Home Rule Amendment overtly established a role for municipalities in such regulatory matters because they oftentimes face problems the state, as a whole, does not. By prohibiting cities from protecting their residents from the lethal scourge of tobacco use, the statute here undermines the fundamental principle of the Home Rule Amendment that the government closest to the people serves the people best.

{¶ 29} R.C. 9.681 is unconstitutional for its blatant disregard of the Home Rule Amendment. We find the trial court did not err in granting the motion for permanent

injunction on the state's enforcement of R.C. 9.681 against appellees. Accordingly, we overrule the state's first assignment of error.

B. Second Assignment of Error

{¶ 30} In its second assignment of error, the state contends the trial court erred in denying its motions in limine and permitting appellees to call testifying witnesses at trial. Trial courts exercise significant discretion over evidentiary rulings, and we accordingly reverse such rulings only for an abuse of discretion that materially prejudices the affected party. *State v. Lawson*, 2020-Ohio-3004, ¶ 11 (10th Dist.). Furthermore, the present case involved a bench trial. "[I]n a bench trial, a trial court is presumed to have considered only the relevant, material[,] and competent evidence." *State v. Addison*, 2004-Ohio-5154, ¶ 10 (10th Dist.), citing *State v. Bays*, 87 Ohio St.3d 15, 28 (1999). This presumption may be defeated only by contrary, affirmative evidence from the record. *See State v. Williams*, 2018-Ohio-974, ¶ 27 (10th Dist.).

{¶ 31} Here, the state fails to establish the trial court abused its discretion. We presume the court in conducting the bench trial considered evidence only insofar as it was relevant. The court ruled in the state's favor on every count except the home rule question, which, being a purely legal matter, was properly decided by application of the *Canton* test and without reference to the evidence put on by appellees. Finding no abuse of discretion in the trial court's evidentiary rulings, we accordingly overrule the state's second assignment of error.

IV. Conclusion

{¶ 32} Having overruled the state's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

MENTEL and BOGGS, JJ., concur.

Exhibit B

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus et al.,	:	
Plaintiffs-Appellees,	:	
v.	:	No. 24AP-333 (C.P.C. No. 24CV-2865)
State of Ohio,	:	(REGULAR CALENDAR)
Defendant-Appellant,	:	
Ohio Department of Health et al.,	:	
Defendants-Appellees.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on July 8, 2025, appellant's two assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Any outstanding appellate court costs are waived in this matter.

LELAND, MENTEL, & BOGGS, JJ.

/s/ Judge
Judge David J. Leland

Franklin County Ohio Court of Appeals Clerk of Courts- 2025 Jul 08 7:45 PM-24AP000333

Franklin County Ohio Court of Appeals Clerk of Courts- 2025 Jul 08 7:45 PM-24AP000333

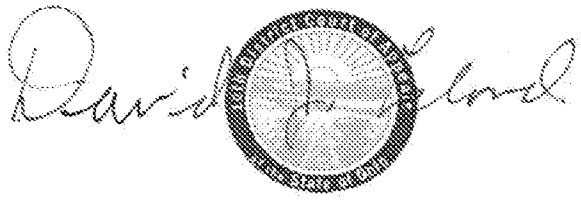
Date: 07-08-2025

Case Title: CITY OF COLUMBUS ET AL -VS- STATE OF OHIO ET AL

Case Number: 24AP000333

Type: JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge David J. Leland