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.	:	
	:	

REPLY BRIEF OF APPELLANT STATE OF OHIO

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REPLY

When Ohio courts decide home-rule cases, they should focus on the Constitution's text, *not* a confusing judge-made test. The Court should clarify as much here.

Ohio's Home Rule Amendment provides that the State's "general laws" override conflicting acts of local police power. Ohio Const., art. XVIII, §3. The text and history are clear: when Ohioans adopted home rule in 1912, "general laws" were simply laws that operated uniformly across Ohio. This Court, however, employs a four-prong general-law test that is anything but clear. *Canton v. State*, 2002-Ohio-2005, ¶21. The Court should abandon that test and return to original public meaning.

In response, the plaintiff cities purport to defend "a century of holdings" about home rule. City Br.11. But their defense is highly selective. The cities do not try to defend—that is, harmonize—*all* of this Court's home-rule cases. Instead, the cities simply disregard the cases they do not like. The cities, for example, have virtually nothing to say about this Court's cases regarding firearms. The cities also downplay the many cases teaching that home-rule analysis must consider all state laws on a topic, not just challenged laws in isolation. Ohio Br.45 (collecting such cases).

At day's end, no party to this case offers a principled way to harmonize existing home-rule precedent. That is because no such path exists. This Court's precedent needs reform. That reform should favor constitutional text over judge-made doctrine.

I. The Court should overrule *Canton* and apply original meaning.

The first proposition asks the Court to overrule the *Canton* test. The test is wrong, unworkable, and unreliable. Ohio Br.9–40. The cities' defense of *Canton* is unpersuasive, both as a matter of the test's correctness and as a matter of *stare decisis*.

A. The *Canton* test is wrong, as are the cities' arguments.

When this Court interprets the Ohio Constitution, it looks to "original public meaning." *State ex rel. Gatehouse Media Ohio Holdings II, Inc. v. Columbus Police Dep't*, 2025-Ohio-5243, ¶17. 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.* In 1912, a "general law" was a law operating uniformly across Ohio. Ohio Br.9–32. The statute challenged here fits that bill. *See* R.C. 9.681.

The cities do not dispute R.C. 9.681's uniform application. They instead argue that the third and fourth prongs of the *Canton* test also fall within original meaning. 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. *Canton*, 2002-Ohio-2005 at ¶21. In defending those prongs, the cities argue that as originally understood the phrase "general laws" prevented the State from prohibiting—that is, preempting—municipal exercises of police power on given subjects. *See* City Br.23–30. But this "no-preemption rule" lacks a basis in the Home Rule Amendment's text or history.

1. The cities distort the Home Rule Amendment's text.

For original public meaning, the "first consideration is always a provision's text." *State ex rel. Gatehouse*, 2025-Ohio-5243 at ¶17. For many reasons, Ohioans in 1912 would have understood "general laws" to be laws operating uniformly across Ohio. The word "general" meant the same thing back then: something universally or commonly applicable. *See Platt v. Craig*, 66 Ohio St. 75, 77–78 (1902). Surrounding words within the Home Rule Amendment—distinguishing "general" and "local" authority—reinforced that "general laws" were "those not confined within a specific

locality." *Dayton v. State*, 2017-Ohio-6909, ¶94 (DeWine, J., dissenting). Before 1912, this Court defined "general laws" to mean laws with uniform application. *See Cincinnati St. Ry. Co. v. Horstman*, 72 Ohio St. 93, 109 (1905). And the Ohio Constitution's Uniformity Clause already said that laws of a "general nature" were those with "a uniform operation throughout the state." Ohio Const., art. II, §26.

Against all this, the plaintiff cities struggle to locate their "no-preemption rule" within the Constitution's text. Their various attempts to do so miss the mark.

General laws. Begin with the cities' argument about the phrase "general laws." Citing a 1910 legal dictionary, the cities suggest that "general laws," as "defined in 1912," referred to laws that operated on people—"the public"—and not municipalities. City Br.25. The very dictionary the cities cite refutes that argument. It says that a "general law … is a law that embraces a class of subjects *or places*, and does not omit any subject *or place* naturally belonging to such class." *Black's Law Dictionary* 701 (2d ed. 1910) (emphases added). Thus, the full definition confirms that general laws could regulate "places," such as municipalities. Limiting "general laws" to laws regulating people (and not places) also would have been a strange restriction to Ohioans at the time. As early as 1851, the Ohio Constitution *required* lawmakers to use "general laws" to define municipal power. *See* Ohio Const., art. XIII, §6; Ohio Br.15–16.

Conflict. Given their weakness on "general laws," the cities quickly pivot to the word "conflict." City Br.26–27. Recall that, for general laws to override local police power, state and local laws must "conflict." Ohio Const., art. XVIII, §3. The cities read the word "conflict" in an unnaturally narrow way. They say that a "conflict"

does not occur when municipalities act *despite* a state prohibition against municipal action on a subject. This narrow interpretation of the word "conflict" is wrong, both as a matter of unchallenged precedent and as a matter of original meaning.

Consider first precedent that no one challenges here. This Court has concluded that the State may create a home-rule conflict by declaring its intent "to control a subject exclusively." *Mendenhall v. Akron*, 2008-Ohio-270, ¶32. A conflict thus exists when a statute "expressly signal[s] that the state has exclusivity in the area." *Id.* at ¶34. The cities have not asked this Court to overrule this conflict standard from *Mendenhall*. And the challenged statute undoubtedly signals state exclusivity. *See* R.C. 9.681; *cf.* Ohio Br.30–31 (explaining why a conflict also exists under the approach from *Struthers v. Sokol*, 108 Ohio St. 263 (1923), as the challenged statute gives citizens and businesses the freedom to engage in conduct that the cities seek to forbid). Thus, a conflict exists here under this Court's unchallenged precedent.

Regardless, the cities misstate the original public meaning of "conflict." Like the word "general," the word "conflict" meant the same thing in 1912 as it does today. And the word's ordinary meaning was quite broad. One dictionary from the era defined conflict as capturing a "violent collision," a "strife for the mastery," or a "hostile contest." *Webster's International Dictionary* 178 (G. & C. Merriam Co. 1898). The same dictionary listed "struggle" and "contention" as synonyms. *Id.* Another dictionary defined conflict to include "mutual opposition." James C. Fernard, *The Concise Standard Dictionary* 89 (Funk & Wagnalls Co. 1910). Still another defined conflict as describing a "clash" or things being "incompatible." H.W. & F.G. Fowler, *The*

Concise Oxford Dictionary of Current English 173 (Oxford 1912). Applying these definitions, municipalities taking actions that the State forbids is a type of "conflict."

Legal definitions of "conflict" from the time also include clashes between different government authorities and bodies of laws. For example, a turn of the century dictionary and cyclopedia explained that "conflict[s]" could include "*counteraction*, as of causes, *laws,* or agencies *of any kind*." *The Century Dictionary and Cyclopedia* 1186 (1903), https://babel.hathitrust.org/cgi/pt?id=mdp.39015011271270&seq=320 (emphases added). And in 1910, legal dictionaries broadly defined "conflicts of law" to include "opposition, conflict, or antagonism between different laws of the same state or sovereignty upon the same subject-matter." *Black's Law Dictionary* 244–45 (2d ed. 1910). These legal definitions capture scenarios where laws of a higher Ohio authority (the State) block the laws of a lower Ohio authority (municipalities). *Cf. Atkin v. Kansas*, 191 U.S. 207, 220 (1903) (noting that municipalities are mere "creatures" of the State that "exercis[e] a part" of the State's sovereignty).

This Court's pre-1912 caselaw leads to the same conclusion about "conflict." Recall that, before 1912, the Ohio Constitution precluded the State from conferring municipal power through special legislation. Ohio Const., art. XIII, §6; Ohio Br.15–16. When the General Assembly violated that prohibition, this Court repeatedly described such violations as "conflict" between state legislation and the Constitution. *Platt*, 66 Ohio St. at 77, 79–80; *State ex rel. Wirsch v. Spellmire*, 67 Ohio St. 77, 80, 87–89 (1902); *Kenton v. State*, 52 Ohio St. 59 (1894), syllabus ¶1; *cf. also Kelley v. State*, 6 Ohio St. 269, 274–75 (1856) (describing the General Assembly's violation of

the Uniformity Clause as a "conflict"); *State ex rel. Attorney Gen. v. Cincinnati*, 20 Ohio St. 18, 18 (1870) (counsel argument discussing a "conflict" between special laws and the Ohio Constitution). Thus, in the leadup to 1912, a government body taking action that a higher source of law forbade *was* a form of "conflict."

Finally, analogous federal law reinforces that the term "conflict" is multi-faceted. In the context of federal preemption, the U.S. Supreme Court has explained that laws can be "said to conflict" for different reasons. *Kansas v. Garcia*, 589 U.S. 191, 202 (2020). Sometimes a conflict arises because it is impossible to comply with the substantive requirements of two different bodies of law. Other times a "conflict" arises simply because "a federal statute … expressly preempt[s] state law." *Id.* at 202. Nothing is unusual, therefore, about viewing preemption as a type of "conflict."

Surrounding constitutional provisions. The cities look next to surrounding provisions. In particular, the cities stress Article XVIII, Section 13 of the Ohio Constitution. That provision says that the State may pass laws "to limit the power of municipalities to levy taxes and incur debts." Ohio Const., art. XVIII, §13. The cities argue that, if the State retained preemptive power under the Home Rule Amendment (Article XVIII, Section 3), then there would have been no need for a separate provision granting the General Assembly the power to limit municipal taxing power. *See* City Br.27–29. The cities are again wrong, for at least three reasons.

First, municipal taxing power is a power of local self-government, *not* a local police power. *See Cincinnati Bell Tel. Co. v. Cincinnati*, 81 Ohio St. 3d 599, 602 (1998) (citing *State ex rel. Zielonka v. Carrel*, 99 Ohio St. 220, 227 (1919)). The distinction

matters because this Court has long read the Home Rule Amendment as giving municipalities "full authority" over local self-government. *Fitzgerald v. Cleveland*, 88 Ohio St. 338, 391 (1913). It follows that, because local taxation is a matter of local self-government, the State *needed* to receive special authority through "other parts of Article XVIII" in order to "limit [municipal] power to levy taxes and incur debts." *See id.* at 344, 348. In other words, the State could *not* limit municipal taxation *unless* it received authority *beyond* its authority over local police matters. George Harris—the chair of the committee on municipal government—perhaps put it best during convention debates. He said that the drafters sought to ensure that *both* "the great powers of taxation" *and* "the great police power" were "held with a firm hand by the state." 2 Proceedings and Debates of the Constitutional Convention of the State of Ohio, 1456 (1912) ("*Convention Debates*").

Second, even setting aside the local-self-government distinction, the State's authority over local taxation is *broader* than its authority over local police powers. The Home Rule Amendment limits the General Assembly to using "general laws" as a check on local police power. Ohio Const., art. XVIII, §3. The municipal taxation provision contains no such limit: it just says "Laws may be passed." Ohio Const., art. XVIII, §13. So, for municipal taxation and debt, the Constitution gives the General Assembly extra flexibility to respond to problems unique to a given municipality. The provision, it follows, is not surplusage. *Contra* City Br.27–29.

Third, nothing is surprising about legal text taking a belt-and-suspenders approach to ensure clarity on sensitive topics. *See Snyder v. United States*, 603 U.S. 1,

19 (2024); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 2022-Ohio-1235, ¶143 (DeWine, J., dissenting). Here, some constitutional overlap on the sensitive topic of municipal taxation would be no surprise. Even before 1912, the Constitution granted lawmakers broad power to restrict municipal taxation. *See* Ohio Const., art. XIII, §6. But delegates in 1912 still thought that, for home-rule purposes, it was important to include "the greatest possible safeguards" against "debauchery and riot in public funds." *Convention Debates* at 1461. The delegates thus placed "special emphasis" on taxation so "that there might be no mistake as to the power of the legislature over the matter." *Cincinnati v. Roettinger*, 105 Ohio St. 145, 156 (1922). Such emphasis makes good sense. In 1912, no federal bankruptcy process existed for municipalities, so the State needed to be cautious. *See Ashton v. Cameron County Water Improvement Dist.*, 298 U.S. 513 (1936), syllabus ¶2.

The cities fare no better as to Article XVIII, Section 12 of the Ohio Constitution. *See* City Br.27–28. That provision is not about the State's ability to restrain local police power. The provision instead outlines special powers *for municipalities* when it comes to bonds for public utilities. Because the provision focuses on a special type of municipal power, no tension exists between the provision and the State's position.

One final point before moving from text to history. *Amici* supporting the cities suggest that the Ohio Constitution's Uniformity Clause cuts against the State's position. Mayor Br.7 (citing Ohio Const., art. II, §26). *Amici* are incorrect. The Uniformity Clause and the Home Rule Amendment perform different roles. The Uniformity Clause effectively defines general laws for constitutional purposes, teaching

that laws of a "general nature" have "a uniform operation throughout the state." Ohio Const., art. II, §26. By contrast, the Home Rule Amendment creates a presumption in favor of municipal power. That is, the provision gives municipalities local police powers *until* the State says otherwise. *Below* 13–15 (detailing how the Home Rule Amendment reversed the pre-existing "Dillon rule" against municipal authority).

2. The cities' position is at odds with history.

Ohio's home-rule history confirms that "general laws" are laws that operate uniformly across the State. Ohio Br.13–29. The cities' contrary view is unconvincing.

Pre-1912 precedent about "general laws." One major problem with the cities' historical account is that it ignores caselaw before 1912. Again, when Ohioans amended their Constitution in 1851, they prohibited the General Assembly from granting municipal power via special legislation. Ohio Br.15–16. As a result, this Court decided many cases between 1851 and 1912 distinguishing general laws from special laws. Ohio Br.16–19. Most critical, this Court in 1905 unanimously defined the term "general law." *Horstman*, 72 Ohio St. at 109. A general law, the Court said, was a law "operating equally upon all of a group of objects" and not "restricted to" a particular "locality." *Id.* Thus, if the Constitution's plain text leaves any doubt about the meaning of "general laws," this Court's early cases provide vital context. To sharpen the point, convention delegates openly recognized that "general laws" was an established legal term. *See, e.g.*, *Convention Debates* at 1442, 1464, 1471–72, 1481.

Nonetheless, the cities disregard these early cases. They do not discuss *Horstman.* In fact, they do not cite any case decided before 1913. City Br.iii–v.

Convention debates. The cities' discussion of the convention debates also leaves much to be desired. When those debates on home rule are read as a whole, two overarching things stand out. *First*, convention delegates thought that the Home Rule Amendment's main goal was to switch *from* a pre-existing presumption against local power (the Dillon rule) *to* a presumption in favor of local power. *See, e.g.*, *Convention Debates* at 1433, 1439–41, 1447, 1456–58, 1461, 1471. *Second*, delegates recognized that—even with a presumption in favor of local power—the State would retain the ability to prohibit, forbid, or deny local exercises of police power on a given subject. *Convention Debates* at 1433, 1439, 1458, 1466, 1471–72, 1486.

The cities are far more selective in their review of the debates. For example, the cities feature block quotes from delegates—specifically, delegates Frank G. Hursh and Robert Crosser—that, in their view, reflect how home rule should be "understood." City Br.29. They omit that both quoted delegates *opposed* key revisions that led to the Home Rule Amendment's ultimate language. *See Convention Debates* at 1313, 1472, 1474. Towards the end of the home-rule debate, one of the quoted delegates (Crosser) even suggested that those revisions were "intended to destroy the principle of home rule" he was after. *Id.* at 1483; *see also id.* at 1484–85.

The cities also repeat an error that the Tenth District made. *See* Ohio Br.42. They cite isolated debate passages to suggest that home rule gave municipalities the power to "always go further than state regulations." City Br.38–39. The "always" is where this argument veers off course. The delegates recognized that when the State and municipalities both affirmatively regulated the same subject, home rule would allow

municipalities to add their own requirements so long as they did not lower state standards. For example, if the State did not want buildings higher than 100 feet, cities could add that buildings should in fact be no higher than 60 feet. *Convention Debates* at 1466 (Harris). But the delegates *also recognized* that the State would still have the final option to "enact a general law forbidding the municipality from exercising that particular power," "the moment" a "municipality exercises any power which the general assembly thinks beyond the province of the municipality." *Id.* (Harris). The State thus retained the ability to bar cities from imposing "requirements put in [] addition to those fixed by" state law. *Id.* at 1469 (Harris). True, some delegates wanted a more extreme home rule. *See* City Br.39. But the predominant view was that the State would retain authority to prohibit acts of local police power. *E.g.*, *Convention Debates* at 1433, 1439, 1458, 1466, 1469, 1471–72, 1486.

The cities' arguments about communications surrounding the convention also fall flat. Near the convention's end, the delegates published an address to the people, briefly summarizing the Home Rule Amendment. Ohio Br.28–29. The cities suggest that this address supports their position. City Br.40–41. It does not. The address informed voters that home rule "specifically reserved [the State's] authority" in several ways, including by leaving the State to ultimately decide what was best for "the general welfare of" Ohio on matters of police power. *Amendments to the Constitution of Ohio: Proposed by the Constitutional Convention* 26 (1912), https://babel.hathitrust.org/cgi/pt?id=uiug.30112068099826&seq=5.

The cities also collect a few generalized statements that delegates made around the time of the convention. City Br.42–43. Although these statements contain pro-home-rule rhetoric, none actually suggests that home rule would remove the State's authority to restrict local police power. The cities also resort to citing hyperbole from opponents seeking to thwart the Home Rule Amendment. City Br.44–45. For obvious reasons, these hostile statements are an unreliable source for gauging the Constitution's true meaning. Notably, proponents of home rule communicated with voters (via newspapers and speeches) to clarify that under home rule "cities would not wield unchecked power, but instead would remain in leash of the state." Timothy D. Lanzendorfer, *Originalism at Home: The Original Understanding of Ohio's Home Rule Amendment*, 73 Case W. Rsrv. L. Rev. 1, 21 (2022) (quotation omitted).

Drafting history. During the convention, the delegates amended the initial home-rule proposal that emerged out of committee. Ohio Br.24–26. The cities seize on one such amendment. They argue that by deleting certain words from the committee proposal—about when conflicts would arise—the delegates subtly removed the State's authority to preempt municipalities on matters of local police power. City Br.38–40. The cities are once again wrong. Both the text and the debates illustrate that this amendment *increased* the State's ability to restrict local police power.

Consider what happened textually. The committee proposal contained a clear-statement rule *in favor of municipalities*. It said that state and local laws would not "be deemed in conflict … *unless* the general assembly … shall specifically deny all municipalities the right to act thereon." *Convention Debates* at 1313 (emphasis

added). That text would have meant that even if state and local law were incompatible, no conflict would arise until the State expressly said so. By removing this specific-denial language, the delegates returned the word "conflict" to its ordinary (broader) meaning and *increased* the State's ability to create conflicts. As shown above (at 4–6), under that ordinary meaning, a conflict includes, but is not limited to, situations where the State expressly forbids municipal action. Once unpacked, this change bolsters the State's position. The initial language leaves no doubt that, in the delegates' view, express denial of power *was* a type of "conflict." *Accord above* 4–6.

The tenor of the debates reinforces this reading. The "advocates of home rule" wanted the specific-denial language; they wanted municipalities to "have full right to act" until the State spoke in a "clear" matter. *Id.* at 1463. One such advocate (Crosser) even argued that the change "struck out … the very thing we have been striving for." *Id.* at 1484–85. By contrast, the delegates who wanted to delete the language—those who prevailed—worried that requiring such specificity would give municipalities too much power to "nullif[y]" state laws. *Id.* at 1469–70. They worried that the initial language went too far in giving municipalities "the superior and supreme right to act." *Id.* at 1463. In short, the cities' position—that the deletion eliminated a broad swath of state power—does not fit with how the debates unfolded.

3. The cities overstate the Home Rule Amendment's purpose and thus make an implausible argument.

Armed with the full history, a broader point emerges. The plaintiff cities view the purpose of home rule through their own modern lens rather than from a historical perspective. A recurring battle cry of the cities and their *amici* is that the State's

position would render home rule meaningless. *E.g.*, City Br.46; Mayor Br.2, 6. But that misunderstands what the Home Rule Amendment accomplished.

To appreciate the Amendment's purpose, return to conditions before 1912. Back then, Ohio used the so-called "Dillon rule" to gauge municipal power. Ohio Br.14. Under that strict rule, municipalities were presumed as a default to have *no power*. *E.g.*, *Bloom v. Xenia*, 32 Ohio St. 461, 465 (1877). Against that backdrop, the "main thing" that the Home Rule Amendment did was to flip the presumption: instead of a no-power default, the assumption would be that municipalities have power "to do those things which are not prohibited" by the State. *Convention Debates* at 1433; *accord id.* at 1439–41, 1447, 1456–58, 1461, 1471. This shift in presumption might not seem like a lot through the cities' modern eyes. But, in 1912, the end of the Dillon rule represented a sea change—a radical step for local governments.

Accounting for this "main" purpose of home rule, the cities' no-preemption rule becomes fanciful. After all, reversing a *presumption* about municipal authority markedly differs from *removing* the State's final authority to forbid acts of local police power. Remember also that courts do not expect major legal changes through obscure language. *E.g.*, *Carrel v. Allied Prods. Corp.*, 78 Ohio St. 3d 284, 287 (1997); *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). Presumably, the same rule of construction applies to constitutional interpretation. *See Centerville v. Knab*, 2020-Ohio-5219, ¶22; *Cal. Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 260–61 (2011). This standard rule of construction makes the cities' position even more implausible. If the Constitution's drafters truly wished to remove the State's authority over local

police power, they would not have kept the matter a secret. But the cities' no-preemption rule assumes a subtle, hidden message in words like "conflict" and "general laws." The State made this same no-elephants-in-mouseholes point within its opening brief. Ohio Br.43–44. Noticeably, the cities' briefing offers no retort.

One further point relating to purpose: contrary to the cities' extreme suggestions, City Br.46, the State does not argue that it could enact a law banning all local police power. That would be reimposing the Dillon rule, not subject-specific preemption.

B. Other *stare-decisis* considerations do not save the *Canton* test.

Remaining *stare-decisis* factors also cut against the *Canton* test. The last twenty-plus years have shown that the test is unworkable and unreliable. Ohio Br.36–40. Sometimes the test allows Ohio to bar local regulation. *See Cleveland v. State*, 2010-Ohio-6318 ("*Cleveland Firearms*"); *Am. Fin. Servs. Ass'n v. Cleveland*, 2006-Ohio-6043. Other times it does not. *Cleveland v. State*, 2014-Ohio-86 ("*Cleveland Towing*"); *Canton*, 2002-Ohio-2005. And no principled reason explains the difference.

The cities do not cite normal *stare-decisis* factors such as workability or reliability. Nor do they try to reconcile post-*Canton* cases. As one example, the cities refer only fleetingly to *Cleveland Firearms*. *See* City Br.10. (That is no surprise; many cities keep trying to impose their own gun laws despite that case. Ohio Br.38.) Instead of defending *Canton* itself, the cities exalt *stare decisis* in the abstract. They also exalt pre-*Canton* home-rule cases. Both strategies fail.

1. *Stare decisis* has less force for constitutional decisions.

Initially, the cities wrongly suggest that the Court "need not even" consider the Home Rule Amendment's original meaning because *stare decisis* insulates *Canton*

from review. City Br.21. If *Canton* was wrongly decided, the argument goes, then lawmakers or voters should attempt to change the Constitution's language. *See id.* at 22. This argument flips constitutional *stare decisis* on its head.

Stare decisis applies with less force, not more, in constitutional cases. *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶27. That is because it is much harder to amend the Constitution—and thus fix wrong decisions—than to amend statutes. *Rocky River v. State Empl. Rels. Bd.*, 43 Ohio St. 3d 1, 6 (1989). As a result, review of constitutional cases focuses mainly on the correctness of earlier decisions. *See id.*; *Bloom*, 2024-Ohio-5029 at ¶27.

In arguing otherwise, the cities rely on Justice Fischer's plurality opinion in *Dayton*. City Br.21–22. But the cities omit critical aspects of that analysis. The plurality there did not say that *Canton* was forever untouchable. The plurality instead said that *that* case was "not the time" for reformulating home-rule doctrine. *Dayton*, 2017-Ohio-6909 at ¶28 (Fischer, J., plurality). That was so because no party to that case had "developed argument that the *Canton* test should be modified or overruled." *Id.* at ¶¶30–31. The same thing cannot be said here. The Court accepted a proposition directly challenging *Canton*. So the cities cannot dodge the issue of whether *Canton* was right or wrong. *Contra* City Br.21.

Practically speaking, the lack of constitutional reform since *Canton* does not signal that the test is correct or workable. *Contra* City Br.22. A well-known problem with the *Canton* test is its failure to yield predictable results. Although *Canton* imposes atextual requirements on the State, the State still wins some cases, including

cases about the high-profile topic of firearms. *See Cleveland Firearms*, 2010-Ohio-6318; *Newburgh Heights v. State*, 2022-Ohio-1642. Such victories have likely masked (to lawmakers and citizens) the need for reform. But that is no saving grace for *stare decisis*. On that front, the test's unpredictability is a bug, not a feature.

2. Post-1912 cases do not reflect original public meaning.

In discussing the meaning of "general laws," the cities put much stock in a handful of cases that post-date the Home Rule Amendment and pre-date *Canton*. City Br.30–33. These post-1912 cases are of limited value in assessing original public meaning. True, cases decided after, but close in time to, a constitutional shift may sometimes illuminate original meaning, especially when earlier materials are "missing or inadequate." Randy E. Barnett, *The Original Meaning of the Commerce Clause*, 68 U. Chi. L. Rev. 101, 108 (2001). But the Court should not "let conflicting evidence" from "after drafting and ratification … trump evidence of a clear public meaning that existed during" the ratification process. *Id.* That matters here because an abundance of earlier materials—including this Court's pre-1912 cases—provide better insight into what "general laws" meant circa 1912.

Regardless, the cases the cities feature do not focus on original public meaning. Consider *Fremont v. Keating*, 96 Ohio St. 468 (1917). The Court's short opinion there did not grapple with the meaning of "general laws" or "conflict." The Court simply declared, without analysis or explanation, that a state statute barring local traffic regulation was unconstitutional. *Id.* at 470; *see also Greenburg v. Cleveland*, 98 Ohio St. 282, 286 (1918) (parroting *Fremont* in dicta). The cities also highlight cases from

many years after the Home Rule Amendment's adoption. *See Youngstown v. Evans*, 121 Ohio St. 342 (1929); *West Jefferson v. Robinson*, 1 Ohio St. 2d 113 (1965). Neither *Youngstown* nor *West Jefferson* performed any in-depth review of original meaning.

Finally, the cities stress caselaw about a *distinct* topic: local self-government. *E.g.*, *Fitzgerald*, 88 Ohio St. at 342 (addressing local elections); *Froelich v. Cleveland*, 99 Ohio St. 376, 386–87 (1919) (holding that certain street-management concerns fell within local self-government), *questioned by Marich v. Bob Bennett Constr. Co.*, 2008-Ohio-92, ¶¶13–14. Cases like *Fitzgerald* and *Froelich* are unhelpful here because this Court approaches local self-government differently from police power. And all agree that *this* is a police-power case. *Columbus v. State*, 2025-Ohio-2408, ¶17 (10th Dist.).

Finally, that home-rule confusion predates *Canton* is even more reason for a return to the text. Because older home-rule cases do not seriously engage with the "threshold issue" of original public meaning, they should not block reform. *See Toledo City Sch. Dist. Bd. of Educ. v. State Bd. of Educ. of Ohio*, 2016-Ohio-2806, ¶¶38–39.

II. Alternatively, the Court should at least clarify the *Canton* test.

If the Court sticks with *Canton*, it should clarify the test. As many cases teach, a proper home-rule analysis requires consideration of *all* state statutes regulating a given subject. Ohio Br.45 (collecting authority). Courts, it follows, should not evaluate a challenged statute in isolation. Indeed, three of *Canton*'s four prongs make little sense *unless* courts consider Ohio law as a whole. Ohio Br.46. Viewing the full picture here, R.C. 9.681 satisfies the *Canton* test. Ohio statutes regulate tobacco-related conduct in many ways. Ohio Br.3–4. Read in this context, R.C. 9.681 does

not merely forbid municipal regulation; it permits citizens and businesses to engage in activities that the State does not forbid. *See Cincinnati v. Baskin*, 2006-Ohio-6422, ¶17 (recognizing that rules of conduct can be *either* permissive *or* restrictive).

A. The cities overvalue the *Dayton* and *Cleveland Towing* cases.

The cities do not directly address this Court's many home-rule cases prohibiting isolated consideration of challenged statutes. They instead suggest that this Court has "shift[ed] away" from that rule recently. *See* City Br.10, 19. The cities are wrong. They overstate the value of this Court's decisions in *Dayton* and *Cleveland Towing*.

No opinion in *Dayton* garnered a majority. That means *Dayton* does not alter this Court's home-rule doctrine. *See Nascar Holdings, Inc. v. Testa*, 2017-Ohio-9118, ¶19. The cities nonetheless argue that *Dayton* became "controlling" through a single unreasoned sentence in *Springfield v. State*, 2017-Ohio-8954, ¶1. City Br.19. To repeat that argument should be to reject it. *Springfield* was a routine remand for further consideration in light of *Dayton*; it did not "shift" doctrine. *Contra* City Br.10, 19.

The cities' reliance on *Cleveland Towing* is also misplaced. That decision is admittedly confusing. In application, the decision seems to misapply doctrine by reading a sentence of a challenged statute in isolation. *Cleveland Towing*, 2014-Ohio-86 at ¶¶15–16. But, in reciting legal standards for home rule, *Cleveland Towing* did not suggest any change to the *Canton* test. *Id.* at ¶¶9–17. Nor did *Cleveland Towing* signal that it was overruling earlier cases. *Id.* Considering all this, *Cleveland Towing* should be read for what it is: an outlier. *Compare id.* at ¶16 *with Cleveland Firearms*, 2010-Ohio-6318 at ¶29; *Mendenhall*, 2008-Ohio-270 at ¶27; *Clermont Envtl.*

Reclamation Co. v. Wiederhold, 2 Ohio St. 3d 44, 48 (1982); *Ohio Ass'n of Private Detective Agencies v. N. Olmsted*, 65 Ohio St. 3d 242, 245 (1992).

B. The challenged statute serves a legitimate state interest.

The cities and their *amici* embed policy arguments throughout their briefs, both about the value of local tobacco regulation specifically and the value of local government more generally. *E.g.*, City Br.1, 4, 6, 15; Mayor Br.2, 5, 8–10, 20. These arguments are irrelevant. For original public meaning, the question is not where this Court would draw the line between state and local power. The question is where the Constitution's text draws the line. As for *Canton*, the test is not supposed to be a policy debate. *See State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485, ¶33 (lead op.). Thus, even under *Canton*, this case should not turn on whether the State could do "more" to regulate tobacco. *See Cleveland Firearms*, 2010-Ohio-6318 at ¶28.

All that said, the cities are wrong to suggest that R.C. 9.681 serves no state interest. City Br.15. Tobacco regulation involves a classic tug-of-war between health concerns, individual freedoms, and economic interests. The State has significant interests in allowing citizens to exercise their freedoms and shielding businesses from a patchwork of local regulations. *See Cleveland Firearms*, 2010-Ohio-6318 at ¶35; *Baskin*, 2006-Ohio-6422 at ¶17. That the State has balanced competing interests differently from how the cities would prefer does not rise to a constitutional problem.

CONCLUSION

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

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