

**IN THE SUPREME COURT OF OHIO**

CITY OF COLUMBUS, et al.,

Appellees,

v.

STATE OF OHIO

Appellant.

Case No. 25-1057

Appeal from the Court of Appeals,  
Tenth Appellate District (Franklin  
County)

Court of Appeals  
Case No. 24AP-333

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**BRIEF OF NATIONAL SHOOTING SPORTS FOUNDATION, INC.,  
AS *AMICUS CURIAE* SUPPORTING APPELLANT**

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## INTRODUCTION

The Home Rule Amendment allows the Ohio General Assembly to enact “general laws” that preempt municipal regulations. While this case involves the preemption of tobacco regulation, it also has direct implications for other legislation such as R.C. 9.68—the landmark statute that preempts virtually all municipal restrictions on firearms. That statute serves the invaluable purpose of ensuring that Ohio’s firearm laws are uniform throughout the State. And this Court has squarely held that the statute is a “general law.” *Cleveland v. State*, 2010-Ohio-6318. Even so, cities have continued to bring home rule challenges to the statute, the Tenth District suggested in this very case that *Cleveland* is bad law, and Appellees’ position before this Court implies that R.C. 9.68 is unconstitutional. The resulting uncertainty harms every Ohioan who values the right to keep and bear arms.

The ongoing challenges to R.C. 9.68 rest on a fundamental misunderstanding of the Home Rule Amendment. In this case, the Tenth District invalidated the General Assembly’s preemption of municipal tobacco laws (R.C. 9.681) by applying the four-part test in *Canton v. State*, 2002-Ohio-2005. But that test departs from the text and history of the Home Rule Amendment, which allow the Assembly to preempt municipal regulations through uniform, statewide laws. Moreover, *Canton* “has become unworkable,” *Dayton v. State*, 2017-Ohio-6909, ¶47 (O’Neill, J., dissenting), and its use allows courts to prioritize their “policy preferences” over the Amendment’s “language,” *id.* at ¶52 (DeWine, J., dissenting). Indeed, *Canton* has proven especially unworkable in the firearms context, in which both firearm owners and the firearm industry depend on the comprehensive preemption of municipal regulations.

The Court should accordingly overrule *Canton* and decide this case under the original meaning of the Home Rule Amendment. As originally understood, the Amendment means simply that the General Assembly may not micromanage individual cities, but must instead legislate on a uniform, statewide basis. Statutes like R.C. 9.68 and R.C. 9.681 are clearly constitutional under that standard. And there is every reason to adopt that standard here. After all, *stare decisis* “does not matter for its own sake,” but only when it “promotes the evenhanded, predictable, and consistent development of legal principles.” *Johnson v. United States*, 576 U.S. 591, 606 (2015) (Scalia, J.). *Canton*, however, has “been so inconsistent that there is nothing to which to give *stare decisis* effect.” *Dayton* at ¶87 (DeWine, J., dissenting).

If this Court declines to overrule *Canton*, it should instead reverse the decision below by reaffirming its prior decision in *Cleveland*, 2010-Ohio-6318. In *Cleveland*, this Court upheld R.C. 9.68 because the statute is part a “comprehensive collection of firearm laws” that sets forth an affirmative “rule of conduct upon citizens,” as well as a limit on municipal power. *Id.* at ¶¶15–29. In this case, however, the Tenth District refused to consider Ohio’s comprehensive body of tobacco laws, assessed R.C. 9.681 in isolation, and invalidated the statute for itself imposing no “rule of conduct.” App.Opp. ¶¶ 24–25. That was an error. And if that error stands, it will undermine both *Cleveland* and R.C. 9.68, with harmful consequences for the firearm industry.

For those reasons, *amicus* respectfully asks this Court to reverse the judgment below and confirm that the General Assembly has authority to enact preemption statutes like R.C. 9.68 and R.C. 9.681.

## STATEMENT OF INTEREST OF *AMICUS CURIAE*

The National Shooting Sports Foundation, Inc. (“NSSF”) is the firearm industry’s trade association. Formed in 1961, the organization’s over 10,000 members include federally licensed firearms manufacturers, distributors, and retailers of firearms, ammunition, and related products. NSSF members engage in the lawful production, import, distribution, and sale of constitutionally protected arms. At present, NSSF has over 300 members in Ohio.

NSSF’s members have a substantial interest in the authority of the General Assembly to enact firearm laws that are uniform, predictable, and preclusive of additional municipal restrictions. There are substantial advantages to regulating firearms at the state level, as opposed to the municipal level. Indeed, allowing municipalities to enact a patchwork of additional firearm laws would impose significant costs on the lawful business activities of NSSF’s members.

*First*, a complex patchwork of municipal laws would cause confusion for every firearm owner who moves or travels across Ohio. This State has 253 different cities and 670 different villages. *See* State’s Mem. at 9. If each of those localities could enact its own firearm laws, any person who carries a firearm across the State could inadvertently violate a local rule. For example, an individual who travels from his home in Licking County to a shooting range in Madison County could run afoul of a firearm law in Franklin County. And although careful firearm owners may be able to monitor and comply with these local rules, that process would increase the difficulty of owning a firearm, with downstream harms to the firearm industry.

*Second*, a patchwork of municipal regulations would increase compliance costs for every firearm business that operates across municipal lines. Distributors that ship products across the State would face the logistical nightmare of tracking which firearms, ammunition, magazines, accessories, and other products are permitted within each municipality. Retailers would need to track the same information—as well as tailor their security measures, background checks, and other point-of-sale procedures—for every municipality in which they do business. Manufacturers located in Akron and Dayton may also need to alter their product lines, if one of those counties enacts restrictive firearm laws. These burdens would compound rapidly, as more and more municipalities enact their own particularized firearm laws. And the predictable effect of these burdens would be to reduce employment, discourage investment, and erode profits in Ohio’s lawful firearm sector.

*Finally*, without statewide preemption, there is a high risk that some municipalities would needlessly interfere with Ohioans’ ability to manufacture, transport, purchase, sell, possess, and carry firearms. There is a long history of cities placing burdensome and unconstitutional restrictions on the right to bear arms. Most notably, the Supreme Court’s decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), arose from firearm laws in the District of Columbia and New York City, respectively. Similarly here, the General Assembly enacted R.C. 9.68 based on a reasonable “concern” that some Ohio cities were poised to enact new firearm “restrictions.” *Cleveland*, 2010-Ohio-6318, at ¶35.

For all those reasons, NSSF has long defended the rights of state legislatures—including the Ohio General Assembly—to enact uniform laws that exclude additional regulation by municipalities. *See, e.g.*, Brief of *Amicus Curiae* National Shooting Sports Foundation, Inc., *Cleveland v. Ohio*, 2010-Ohio-6318 (No. 2009-2280). Those laws are commonplace across the United States. As of 2013, 45 States had preempted some manner of local firearms regulations. *See* Richard Briffault, *The Challenge of the New Preemption*, 70 *Stan. L. Rev.* 1995, 1999 (2018). And many States have since expanded their preemption statutes, vindicating the same concerns that NSSF has set forth above. *See, e.g.*, Iowa Code Ann. § 335.26 (enacted in 2020) (preempting local restrictions on shooting ranges). NSSF therefore urges this Court—both in this case and elsewhere—to ensure that R.C. 9.68 remains an effective bulwark against the many costs and burdens of municipal firearm regulations.

### **STATEMENT OF THE CASE**

This case involves R.C. 9.681—a state statute that preempts the municipal regulation of tobacco products and alternative nicotine products. As relevant here, R.C. 9.681 reflects the General Assembly’s judgment that the “regulation of [those] products is a matter of general statewide concern that requires statewide regulation.” R.C. 9.681(B). For that reason, the statute imposes a uniform, statewide rule: Municipalities may not enact or enforce any regulation that “conflicts with or preempts any policy of the state regarding the regulation” of the above products, including by setting “standards, requirements, taxes, fees, assessments, or charges of any kind” regarding those products. *Id.*; *see also* R.C. 9.681(D).

The core question in this case is whether R.C. 9.681 is consistent with the Home Rule Amendment. The question arises because several Ohio cities have purported to enact local regulations of tobacco products, including bans on the sale of flavored tobacco products. App.Op. ¶3. In April 2024, those cities filed suit against the State, contending that R.C. 9.681 is unconstitutional. App.Op. ¶6. The trial court agreed with the plaintiff-cities. App.Op. ¶8. And for that reason, the court permanently enjoined the State from enforcing R.C. 9.681 against them. *Id.*

The Tenth District affirmed that judgment by applying the four-part test in *Canton*, 2002-Ohio-2005. To qualify as a “general law” under that precedent, a statute must “(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.” *Id.* at ¶21. Here, the Tenth District concluded that R.C. 9.681 failed the third and fourth prongs of *Canton* on the ground that the statute itself “enacts no substantive regulation of tobacco.” App.Op. ¶21. In doing so, the Tenth District acknowledged that this Court’s decision in *Cleveland*, 2010-Ohio-6318, requires analyzing challenged preemption statutes “as part of Ohio’s comprehensive collection of [related] laws.” App.Op. ¶24. Nonetheless, the Tenth District believed that other cases had “strayed from this directive,” and thus opted to analyze R.C. 9.681 in isolation from all other state laws concerning tobacco. *Id.*; see App.Op. ¶23, ¶25.

The Tenth District separately held that R.C. 9.681 contravened the “original intent of the Home Rule Amendment.” App.Op. ¶27. For this purpose, the Tenth District reasoned that R.C. 9.681 is not a “general law” because it “regulates nothing yet seeks to preempt the field of tobacco policy.” *Id.* The court also asserted that the “fundamental principle of the Home Rule Amendment” required allowing cities to “protect[] their residents from the lethal source of tobacco use.” App.Op. ¶28.

### **SUMMARY OF ARGUMENT**

I. This Court should hold that the Home Rule Amendment is no obstacle to enacting uniform, statewide legislation, including through preemption statutes like R.C. 9.68 and R.C. 9.681. In particular, this Court should hold that the General Assembly may preempt municipal exercises of the police power, so long as it does so on a uniform, statewide basis. This conclusion follows from the Amendment’s text and history, which make clear that a “general law” is simply a “law framed in general terms, restricted to no locality, and operating equally upon” all similarly situated persons. *Cincinnati St. Ry. Co. v. Horstman*, 72 Ohio St. 93, 109 (1905). Because both R.C. 9.68 and R.C. 9.681 are general laws under that standard, they may lawfully preempt municipal regulations.

While this Court has recently decided home rule issues through the different, multi-part test in *Canton*, that test is fundamentally flawed. Indeed, the *Canton* test is not only inconsistent with the original meaning of the Home Rule Amendment, but also unworkable in practice, especially in the firearms context. This Court should thus overrule *Canton*, confirm the constitutionality of uniform preemption laws, and thereby provide much-needed clarity to this State’s home rule jurisprudence.

**II.** In the alternative, this Court should uphold the constitutionality of R.C. 9.681 under the *Canton* test, as that test was applied in *Cleveland*, 2010-Ohio-6318. Under *Cleveland*, a statute qualifies as a “general law” if it is a *part* of a “comprehensive collection of [] laws” that *together* prescribes an affirmative “rule of conduct” and applies evenly throughout the State. *Id.* at ¶¶ 15–29. That standard is clearly satisfied here because (i) the General Assembly has comprehensively regulated the purchase, sale, and use of tobacco; (ii) R.C. 9.681 is a part of that regulatory scheme; and (iii) R.C. 9.681 applies evenly throughout Ohio. R.C. 9.681 is therefore constitutional even under the *Canton* test.

### ARGUMENT

**I. APPELLANT STATE OF OHIO’S FIRST PROPOSITION OF LAW:**

*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.)*

In this State, as elsewhere, *stare decisis* is not an “inexorable command.” *City of Rocky River v. State Emp. Rel. Bd.*, 43 Ohio St. 3d 1, 6 (1989). Indeed, this Court has long held that *stare decisis* carries less weight in the constitutional context, where the judiciary has a duty to “discard” “incorrect interpretation[s] of the Constitution.” *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶27 (citations omitted). In addition, this Court has long recognized that precedent should be abandoned if it produces “doubt and confusion,” rather than “certainty and stability.” *State v. Harper*, 2020-Ohio-2913, ¶38. For the following reasons, *Canton* was wrongly decided and its four-part test is unworkable. This Court should thus overrule *Canton* and uphold the validity of R.C. 9.681 under the original meaning of the Home Rule Amendment.

**A. The General Assembly May Preempt Municipal Regulations Through Uniform, Statewide Laws.**

1. The Home Rule Amendment authorizes municipalities “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. Under the plain text of that Amendment, the General Assembly may preempt municipal exercises of the police power by enacting “general laws.” For that reason, the central question when applying the Amendment is determining what constitutes a “general law[].”

History provides a clear answer. When the Home Rule Amendment was adopted in 1912, a general law was 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.” *Horstman*, 72 Ohio St. at 109. In short, a statute was a “general law if it applie[d] to all persons similarly situated and to all localities where like conditions exist.” *Assur v. City of Cincinnati*, 102 N.E. 702, 704 (1913); *see also Froelich v. City of Cleveland*, 99 Ohio St. 376, 386 (1919) (explaining that general laws “are manifestly laws which apply uniformly throughout the state”); 1 W.A Shumaker & G.F. Longsdorf, *The Cyclopedic Law Dictionary* 409 (1912) (defining a general law as one that “relat[es] to matters of public concern,” operates “throughout” a jurisdiction, and “affects equally all persons or things of the same class”). In this respect, a general law differed from a “special law,” meaning a statute that created particular rules for a particular person, object, or class. *See Horstman*, 72 Ohio St. at 107–09; *Cyclopedic Law Dictionary* 864, 870.

By the time the Home Rule Amendment was adopted, this Court had already developed a large body of precedent on the difference between general and special laws. This issue had arisen in lawsuits that challenged the validity of state statutes under two provisions of the Ohio Constitution: one providing that “[t]he General Assembly shall pass no special act conferring corporate powers,” Ohio Const. Art. XIII, § 1, and the other instructing that “[a]ll laws, of a general nature, shall have a uniform operation throughout the state,” *id.* Art. II, § 26. To determine whether a statute violated those provisions, this Court often had to decide whether the statute was a general or special law. *See, e.g., Horstman*, 72 Ohio St. 93, 105–11; *State ex rel. Wirsch v. Spellmire*, 67 Ohio St. 77, 82–90 (1902); *State ex rel. Guilbert v. Yates*, 66 Ohio St. 546, 548 (1902). In doing so, the Court developed doctrines to determine when statutes framed in “the guise of general laws” were in fact “special and unconstitutional.” *Gentsch v. State*, 71 Ohio St. 151, 165–66 (1904).

When the drafters of the Home Rule Amendment used the phrase general law, they incorporated this “old soil.” *Stokeling v. United States*, 586 U.S. 73, 80 (2019) (citation omitted). Indeed, George W. Knight—who first introduced the Amendment to the 1912 constitutional convention—explained that “a general law was one that in fact and in form touched the subject that affected the state universally.” 2 Proceedings and Debates of the Constitutional Convention of the State of Ohio 1442 (1912). Another delegate emphasized that the meaning of the phrase “general law” has been “thoroughly well settled” by the courts. *Id.* at 1471–72.

This long-settled understanding of “general laws” has clear implications for the preemption of municipal regulations. Because the plain text of the Home Rule Amendment allows preempting municipal police-power regulations with “general laws,” and because a general law is simply a statute with universal, statewide application, it follows that the Amendment allows the General Assembly to enact a uniform statewide law to preempt municipal regulations.

The drafters of the Home Rule Amendment accepted this conclusion. As Knight explained, the Amendment’s “main” purpose was to “reverse” the long-settled view that municipalities possessed only those “powers [that were] granted by the legislature.” *Id.* at 1433. To that end, the Amendment created a “*presumption* in favor of the lawfulness of the municipalities’ act[s], which [c]ould only be overcome by showing that the power had been *denied to the municipalities* or that it was against the general laws of the state.” *Id.* (emphasis added). This understanding of the Amendment made clear that the General Assembly could preempt municipal regulation on a statewide basis. Indeed, other delegates to the convention made that exact point. *See, e.g., id.* at 1463 (explaining that, under the Amendment, each municipality will exercise a broad police power, “unless the legislature in express terms has prohibited all municipalities from acting on that particular thing.”); *id.* at 1466 (noting that a municipal regulation will have no effect if “the state had denied to municipalities the right to act on the particular subject involved”); *id.* at 1471 (stating that the Amendment will allow municipalities to “do anything they want to do that is not prohibited by the legislature or the fundamental law”).

2. The *Canton* test departs from that original understanding. As discussed, *Canton* held that a statute may qualify as a general law only if it meets four criteria. It 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, at ¶21. Notably, this Court has sometimes assessed *Canton*’s third prong by asking whether a statute “serv[es] an overriding statewide interest.” *Id.* at ¶¶32–33; *see also Dayton*, 2017-Ohio-6909 at ¶20 (plurality op.).

Most of these requirements have no basis in the Amendment’s text or history. For example, the traditional distinction between general and specific laws did not depend on whether a law was “part” of a “comprehensive ... enactment.” *Canton*, 2002-Ohio-2005, at ¶21; *see supra* at 9–11. Nor were general laws limited to those that imposed “police ... regulations” or “rule[s] of conduct” upon “citizens.” *Canton*, 2002-Ohio-2005, at ¶21; *see supra* at 9–11. To the contrary, this Court applied that label to statutes that either governed or granted authority to municipal corporations. *See, e.g., Assur*, 102 N.E. at 702–04; *Horstman*, 72 Ohio St. at 104–06. The delegates at the 1912 convention recognized the General Assembly’s authority to “prohibit[] all municipalities from acting on [a] particular thing.” 2 Proceedings and Debates 1463; *see also id.* at 1466, 1471. And no delegate suggested that this authority was limited by the courts’ view of whether a statute truly serves an *overriding* state interest.

3. The Tenth District’s application of the *Canton* test runs headlong into those problems. There is no dispute that R.C. 9.681 applies uniformly throughout this State, and thus falls within the traditional definition of “general laws.” Nonetheless, the Tenth District held that the statute fails the third and fourth prongs of *Canton* on the ground that it “enacts no substantive regulation of tobacco.” App.Op. ¶21. Specifically, the Tenth District held that R.C. 9.681 is unconstitutional because it “purport[s] only to grant or limit [the] legislative power of a municipal corporation” and “fails to prescribe a rule of conduct upon citizens generally.” *Id.* Because those two requirements have no basis in the original meaning of the Home Rule Amendment, they are no basis for sustaining the Tenth District’s judgment

Nor can that judgment survive on other grounds, including what the Tenth District called the “original intent of the Home Rule Amendment.” App.Op. ¶27. On this issue, the Tenth District reasoned that R.C. 9.681 could not be a “general law” because it “regulates nothing yet seeks to preempt the field of tobacco policy.” *Id.* But that is a contradiction in terms. R.C. 9.681 is a general law precisely because it imposes a uniform, statewide regulation on the State’s municipalities. The General Assembly could not “preempt the field of tobacco policy” without “regulat[ing]” those municipalities. App.Op. ¶27. And absent that regulation, the Assembly could not guarantee the right of Ohioans to buy, sell, use, or manufacture tobacco products under a single statewide standard—free from a patchwork of municipal rules. Guaranteeing that freedom is entirely consistent with the text and history of the Home Rule Amendment. *See supra* at 9–11.

\* \* \*

In sum, it is “time to return to the Constitution.” *Dayton*, 2017-Ohio-6909, ¶88 (DeWine, J., dissenting). Because a “general law is one that operates uniformly throughout the state,” the Home Rule Amendment allows preempting municipal regulations through uniform, statewide statutes, including R.C. 9.681 and R.C. 9.68. *Id.* at ¶95. This Court should thus reverse the decision below, hold that R.C. 9.681 is constitutional, and overrule *Canton*’s separate test for assessing home rule claims.

**B. The *Canton* Test Has Proven Unworkable.**

1. This Court should overrule *Canton* for the additional reason that its test has proven “unworkable.” *Id.* at ¶47 (O’Neill, J., dissenting). As Justice DeWine has documented, the *Canton* test leaves both cities and the General Assembly unable to “say with any particular degree of certainty—on any particular day—who can do what.” *Id.* at ¶55 (DeWine, J., dissenting). For example, the *Canton* test has been applied to allow the Assembly to preempt the municipal regulation of predatory lenders, but not the municipal regulation of manufactured homes. *Id.* at ¶57 (citations omitted). Similarly, the *Canton* test enables the General Assembly to preempt the municipal regulation of both speed lights and traffic signals, but not the “cameras that cities use to monitor a driver’s compliance with speed limits and traffic signals.” *Id.* (citation omitted). Those inconsistent results show that *Canton* has failed to provide “certainty and stability” to home rule litigation. *Harper*, 2020-Ohio-2913, at ¶38; *see also State v. Henderson*, 2020-Ohio-4784, at ¶32 (overruling a precedent that “created uncertainty, inconsistency, frustration, and confusion”).

This inconsistency has significant costs. The General Assembly has preempted municipal regulation on a wide array of subjects, ranging from the sale of alcohol to the operation of pet stores. *See, e.g.*, R.C. 1.63(A) (loan collection); R.C. 956.23 (pet stores); R.C. 1315.30 (check cashing); R.C. 4301.011 (alcohol); R.C. 4775.11 (motor-vehicle repair); R.C. 4925.09 (transportation companies); R.C. 9.68 (firearms). Through each of these statutes, the General Assembly has attempted to give Ohioans the benefit of a uniform regulatory scheme. And that uniformity is essential in many highly regulated industries, including the firearms industry. *See supra* at 3–5. Under *Canton*, however, regulated parties have no way to predict whether a given preemption statute will survive a home rule challenge. *See supra* at 14. And that uncertainty limits regulated parties’ ability to rely on statewide preemption laws, including when they decide whether to expand their businesses in this State.

Critically, this uncertainty is a predictable consequence of *Canton* itself, which enables courts to prioritize their “policy preferences” over the “language of the Home Rule Amendment.” *Dayton* at ¶52 (DeWine, J., dissenting). As noted above, *Canton* asks courts to consider whether a preemption statute serves an “overriding state interest.” 2002-Ohio-2005, at ¶32. And answering that question enables courts to reach their own conclusions on the importance and efficacy of different state laws. For example, this Court held in *Canton* that a preemption statute failed the “overriding state interest” standard because an “exception” in the statute “defeat[ed]” its overall “purpose.” *Id.* at ¶33.

*Canton*'s interest balancing empowers judges to second-guess the General Assembly on the importance of its own legislation. Such balancing tests are “policy by another name.” *United States v. Rahimi*, 602 U.S. 680, 731 (2024) (Kavanaugh, J., concurring). Moreover, “when balancing is the mode of analysis, not much general guidance may be drawn from [an] opinion—just as not much general guidance may be drawn from an opinion setting aside a single jury verdict because in that particular case the evidence of negligence was inadequate.” Antonin Scalia, *The Rule of Law As A Law of Rules*, 56 U. Chi. L. Rev. 1175, 1186 (1989). Small wonder, then, that this Court recently split on how (and whether) to apply *Canton*'s “overriding state interest” standard. See *Dayton*, 2017-Ohio-6909 at ¶¶22, 23, 27 (plurality op.) (concluding that a statute was unconstitutional for lack of an overriding state interest); *id.* at ¶40 (French, J., concurring) (finding unconstitutionality on other grounds to “avoid considering” any overriding state interest); *id.* at ¶¶70, 83–88 (DeWine, J., dissenting) (contending that the statute satisfied the overriding state interest standard, and also that the standard should be abandoned).

2. A separate problem with *Canton* is that there is substantial confusion in the lower courts over how it should be applied. As discussed, this Court upheld R.C. 9.68 by evaluating the statute “*in pari materia* with other statutes regulating firearms.” *Cleveland*, 2010-Ohio-6318, at ¶23; *supra* 2. In this case, however, the Tenth District concluded that there was no “settled authority” on whether R.C. 9.681 must be read alongside or “*in pari materia*” this State’s other tobacco laws. App.Op. ¶24. That was an error, and one that is hardly unique to the Tenth District.

Consider the First District’s recent decision in *Cincinnati v. State*, 2024-Ohio-2425, which centered around recent amendments to R.C. 9.68. Like this case, *Cincinnati* turned in part on whether courts applying the *Canton* test “should parse a state statute challenged under the Home Rule Amendment sentence-by-sentence” or “consider [the statute] more holistically.” *Id.* at ¶36. A requirement to parse statutes sentence-by-sentence would effectively prohibit the General Assembly from preempting most municipal regulations.<sup>1</sup> *Id.* The trial court nonetheless assessed the challenged amendments to R.C. 9.68 sentence-by-sentence, then held that they were unconstitutional. *Id.* And while the First District ultimately reversed the trial court, it declined to consider whether Ohio’s firearm laws must be considered holistically. *Id.* at ¶38. Instead, the court noted that *Canton*’s “various legal tests [] do not always present a portrait of clarity,” and assessed the relevant state laws both “as a whole [and] sentence-by-sentence.” *Id.* at ¶¶1, 38. That disposition reflects uncertainty over what *Canton* actually requires. And in that way, it confirms Justice DeWine’s observation that *Canton* has been so unpredictable “that there is nothing to which to give *stare decisis* effect.” *Dayton*, 2017-Ohio-6909, at ¶87.

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<sup>1</sup> Consider what it would entail to conduct a “sentence-by-sentence” review of a preemption statute. Under that review, a preemption statute would survive only if each of its sentences satisfied the four elements of *Canton*, including the requirement to impose an affirmative “rule of conduct” on Ohio residents. *Canton*, 2002-Ohio-2005, at ¶21. That is a strange standard which few preemption statutes would survive. And although the General Assembly could presumably rewrite its preemption statutes to include more run-on sentences, there is no reason to believe that the Ohio Constitution requires such inartful drafting.

**C. Canton Is Especially Unworkable in the Firearms Context.**

The *Canton* test is especially unworkable in the firearms context. This is true, first and foremost, because those who own and deal in firearms have an acute need for uniform, statewide rules on which they can safely rely. As discussed above, allowing municipalities to enact a patchwork of local firearm laws would create confusion for every firearm owner who moves across the State; increase compliance costs for licensed retailers, distributors, and manufacturers of firearms; and enable some municipalities to unconstitutionally burden the right to bear arms. *See supra* 3–4. *Canton* provides insufficient protection against those dangers.

1. Consider the history of the litigation concerning R.C. 9.68. The General Assembly enacted that statute in 2006 “to provide uniform laws throughout the state” regulating the ownership and possession of firearms. R.C. 9.68(A). Cities soon challenged the statute under the Home Rule Amendment, and the resulting lawsuit ended in this Court’s decision, *Cleveland v. State*, 2010-Ohio-6318. There, this Court upheld R.C. 9.68 because the statute is part a “comprehensive collection of firearms laws” that applies uniformly throughout the State and sets forth an affirmative “rule of conduct upon citizens.” *Id.* at ¶¶ 15–29. In that way, this Court definitively resolved that R.C. 9.68 is constitutional.

Even so, municipalities have continued to bring home rule challenges to R.C. 9.68, and several courts have ruled in the challengers’ favor. *First*, in November 2022, a Franklin County trial court “order[ed] a preliminary injunction against” both the original version of R.C. 9.68 and its subsequent amendments. *Columbus v. State*,

2023-Ohio-2858, at ¶2. *Second*, in September 2023, a trial court in Hamilton County preliminarily enjoined those amendments to R.C. 9.68, while leaving the original statute intact. *Cincinnati*, 2024-Ohio-2425, at ¶10. As relevant here, the amendments at issue in those cases did not alter the fundamental nature of R.C. 9.68, but merely revised the statute to (i) preempt additional firearm regulations and (ii) contain new enforcement mechanisms, including a private right of action. *See id.* at ¶5 (summarizing the amendments).

Those preliminary injunctions are inconsistent with this Court’s decision in *Cleveland*, 2010-Ohio-6318. After all, nothing in the amendments to R.C. 9.68 changed the fact that the statute was part of uniform and “comprehensive collection of firearm laws” that together set forth an affirmative “rule of conduct.” *Id.* at ¶¶ 15–29. *Cleveland* thus required the trial court to uphold the amendments. And while the trial courts’ rulings were eventually vacated on appeal, neither reversal was full-throated. In one case, the Tenth District declined to address the State’s likelihood of success on the merits, but instead vacated the injunction based on both overbreadth and the City’s failure to satisfy the equitable requirements for an injunction (*e.g.*, irreparable harm). *See Columbus* at ¶¶36–60. And in the other case, the First District equivocated on whether R.C. 9.68 must be assessed “as a whole or sentence-by-sentence.” *Cincinnati* at ¶38. The First District also suggested that the General Assembly would lack the authority “to preempt and nullify *any and all* local regulation relating to firearms,” *Cincinnati*, ¶38 (emphasis in original)—a clear invitation to challenge any amendments to R.C. 9.68 that further broaden its scope.

The Tenth District’s decision here added more fuel to the fire. The Tenth District rested its decision on the ground that no “settled authority” required it to consider R.C. 9.681 alongside the many Ohio statutes that affirmatively regulate tobacco. App.Op. ¶24. In doing so, the Tenth District acknowledged that *Cleveland* “required” reading preemption statutes “*in pari materia*” with related legislation. *Id.* But it also insisted that more recent authorities had abrogated *Cleveland* by “stray[ing]” from its “command.” App.Op. ¶24. That insistence was wrong on the merits.<sup>2</sup> And regardless, upholding the Tenth District’s decision would transform it into a blueprint for circumventing *Cleveland* in a future firearms case.

For their part, Appellees appear to accept that result. In their memorandum against jurisdiction, Appellees assert that R.C. 9.681 “is not a general law” because it is “a law designed to regulate municipalities.” Mem. 8 They also take the unqualified position that the statute is unconstitutional solely because it is “a law that prohibits municipal regulation.” *Id.* at 11. But under their position, R.C. 9.68 would be likewise unconstitutional, and *Cleveland* would be bad law. This Court should close the door on that erroneous and disruptive conclusion.

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<sup>2</sup> The Tenth District presented two authorities as abrogating *Cleveland*: the plurality opinion in *Dayton* and a single paragraph in *Cleveland v. State*, 2014-Ohio-86 (hereinafter “*Cleveland II*”). But a plurality opinion cannot abrogate a majority opinion. See *State v. Mills*, 2023-Ohio-4716, ¶21. And the principal holding in *Cleveland II* was that the relevant preemption statute (R.C. 4921.25) was a “general law.” *Cleveland II* at ¶14. Indeed, while *Cleveland II* also held a specific sentence of that statute was unconstitutional, *see id.* ¶16, that conclusion is inconsistent with the opinion’s principal analysis. Because *Cleveland II* held the relevant sentence to be part of a “general law,” it necessarily should have followed that the sentence could preempt municipalities’ use of the police power. Ohio Const. Art. XVIII, § 3; *see supra* at 9.

2. The long arc of municipal firearm litigation confirms the danger of leaving municipalities any opening to target the lawful use of firearms. Beginning in the late 1990s, municipalities across the country began suing firearm companies based on creative new theories that sought to hold them liable for third-party criminal misconduct. See Ryan VanGrack, *The Protection of Lawful Commerce in Arms Act*, 41 Harv. J. on Legis. 541, 542 (2004); Stephen P. Halbrook, *Suing the Firearms Industry: A Case for Federal Reform?*, 7 Chap. L. Rev. 11, 12–13 (2004). Most of the lawsuits failed. See *id.* But the lawfare continued because its champions sought not only to win in the courtroom, but also to use litigation costs to “bankrupt the gun industry” in a “death by a thousand cuts.” VanGrack, 41 Harv. J. on Legis. at 542.

For that reason, “municipal leaders pressed on” with tort litigation “regardless of their chance of success, spending taxpayers’ money in a war of attrition.” Recent Legislation, *Protection of Lawful Commerce in Arms Act*, 119 Harv. L. Rev. 1939, 1940 (2006). Indeed, their campaign has continued despite Congress’s passage of the Protection of Lawful Commerce in Arms Act (“PLCAA”)—a federal statute that bars most civil actions against the firearms industry “resulting from the criminal or unlawful misuse of a [firearm].” 15 U.S.C. §§ 7901(a)(6), 7903(5)(A). Plaintiffs have continued to devise mischievous new arguments seeking to circumvent the PLCAA, and they recently succeeded in bankrupting one of the oldest firearm makers in the United States, Remington Arms Company. See Peg Brickley, *Bankrupt Gun Maker Remington Outdoor to Be Broken Up and Sold*, Wall St. J. (Sept. 27, 2020), <https://on.wsj.com/3wzBqze>.

As the Remington example illustrates, a recent wave of litigation has centered around PLCAA’s predicate exception, which provides that the statute’s protections do not apply where “a manufacturer or seller of a [firearm product] knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.” 15 U.S.C. § 7903(5)(A)(iii). In another recent example, the government of Mexico invoked that exception to sue American manufacturers for allegedly aiding and abetting Mexican drug cartels. *See Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 284–85 (2025). While the Supreme Court ultimately slammed the door on that lawsuit, a federal court of appeals had previously held it raised viable claims. *See id.* at 290–91. Separately, at least ten states have enacted laws that try to pierce PLCAA’s protections by codifying expansive theories of tort liability that only apply to the firearm industry.<sup>3</sup> Litigation under those statutes is ongoing.

Against that backdrop, it is small comfort to the Ohio firearm industry that R.C. 9.68 eventually survived the home rule claims in *Columbus*, 2023-Ohio-2858, and *Cincinnati*, 2024-Ohio-2425. On behalf of its members, NSSF is concerned that the unpredictability of the *Canton* test invites additional home rule challenges to R.C. 9.68. And while those challenges will lack merit, the costs of litigating them would burden both the State and the industry members that would support it.

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<sup>3</sup> *See* Cal. Civ. Code § 3273.51; Colo. Rev. Stat. § 6-27-104; Conn. Public Act 25043; 10 Del. Code § 3930; Haw. Rev. Stat. § 134-102(b)(2); 815 Ill. Comp. Stat. 505/2BBBB; Md. Code Ann., Cts. & Jud. Proc. § 3-2501; N.J.S. § 2C:58-35(a); N.Y. Gen. Bus. Law § 898-c; Wash. Rev. Code § 7.48.330.

\* \* \*

For all those reasons, the *Canton* test is both wrongly decided and practically unworkable. This Court should accordingly overrule *Canton* and confirm the General Assembly’s authority to legislate on a uniform, statewide basis, including through preemption statutes like R.C. 9.68 and R.C. 9.681.

## II. APPELLANT STATE OF OHIO’S SECOND POSITION OF LAW:

*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.*

In the alternative, this Court should reverse the decision below by reaffirming the reasoning in *Cleveland*, 2010-Ohio-6318. *Cleveland* stands for the proposition that a statute qualifies as a “general law” if it is a *part* of a “comprehensive collection of firearm laws” that *as a whole* prescribes an affirmative “rule of conduct” and applies evenly throughout the State. *Id.* at ¶¶ 15–29. In that respect, courts must apply the *Canton* test by considering every state statute that applies to a given subject (*e.g.*, tobacco), not just the statute that happens to be challenged in a particular case. And under that standard, R.C. 9.681 is clearly constitutional. After all, Ohio law comprehensively regulates the purchase, sale, and use of tobacco products. *See, e.g.*, R.C. 2151.87, 2927.02(B)(1), 3794.02. R.C. 9.681 is a part of that regulatory scheme. And the regulatory scheme for tobacco products—just like the regulatory scheme for firearms products—operates uniformly throughout the State. R.C. 9.681 is therefore constitutional under *Cleveland*, and that precedent accordingly requires reversing the decision below.

*Cleveland* was no outlier. This Court has long applied the *Canton* test by evaluating the challenged statute alongside related state laws. For example, the Court held *Mendenhall v. Akron* that “[a]ll sections of a chapter must be read *in pari materia*”—rather than “in isolation”—“to determine whether the statute in question is part of a statewide regulation.” 2008-Ohio-270, ¶27; *see also id.* at ¶¶21–26 (applying that standard). Similarly, *American Financial Services Ass’n v. Cleveland* evaluated the challenged preemption law, which concerned the municipal regulation of predatory lending, against the entirety of “Ohio’s predatory-lending laws.” 2006-Ohio-6043, at ¶¶33–36. Other, earlier cases are in accord. *See, e.g., Ohio Ass’n of Private Detective Agencies v. City of N. Olmsted*, 65 Ohio St. 3d 242, 245 (1992); *Clermont Env’t Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 48 (1982).

A contrary approach to *Canton* would prioritize form over substance. Under the standard applied in the Tenth District, the constitutionality of a preemption statute depends in part on its location within the Revised Code. *See App.Op.* ¶¶21–25. In particular, if the same provision of the Code both preempts municipal regulations and regulates private conduct, the preemption clause is more likely to be constitutional. But if the preemption statute is located in a separate section of the Code, the statute is more likely to be unconstitutional. *See App.Op.* ¶21 (emphasizing that “R.C. 9.681 enacts no substantive regulation of tobacco.”). This odd result would contravene the principle that the “constitutionality of a statute depends upon its operation and effect, and not upon the form it may be made to assume.” *State v. Hipp*, 38 Ohio St. 199, 228 (1882).

For those reasons, if this Court declines to overrule *Canton*, it should uphold the constitutionality of R.C. 9.681 under the standard set forth in *Cleveland*. This approach would confirm the General Assembly's authority to enact uniform, statewide laws over every subject matter that it has comprehensively regulated. And by reinforcing the constitutionality of R.C. 9.68, the approach would provide additional protection to every Ohioan that values the right to keep and bear arms.

### **CONCLUSION**

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

Respectfully submitted,

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