

IN THE SUPREME COURT OF OHIO

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

**AMENDED BRIEF OF AMICI CURIAE THE OHIO COUNCIL OF RETAIL
MERCHANTS, OHIO ENERGY AND CONVENIENCE ASSOCIATION, AND THE
OHIO CHAMBER OF COMMERCE IN SUPPORT OF THE STATE OF OHIO**

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STATEMENT OF INTEREST OF AMICUS CURIAE

Founded in 1922, the Ohio Council of Retail Merchants (“OCRM”) is Ohio’s oldest and largest advocate for the retail and wholesale industries, representing more than 7,000 retailers, wholesalers, and distributors, ranging from local enterprises to influential regional and national businesses and large companies operating across the state. Ohio’s retail industry supports 1.5 million jobs in Ohio. OCRM is dedicated to maintaining a legal environment that supports businesses and creates jobs, and to presenting and protecting its members’ interests on important statewide issues.

Ohio’s energy and convenience industry works around the clock to keep companies energized and open for business, and the Ohio Energy and Convenience Association (“OECA”) is the premier statewide trade association representing their interests. OECA’s members own and operate most of Ohio’s 5,635 convenience stores and employ more than 91,287 Ohioans. Members on the wholesale side employ thousands more in commercial fueling facilities, transportation divisions, heating oil sales, and home offices. Collectively, OECA’s members supply the fuel to move commerce and motorists through the state, drive the economy through job creation, and strengthen local communities through philanthropic engagement.

The Ohio Chamber of Commerce (the “Ohio Chamber”) is Ohio’s largest and most diverse statewide business advocacy organization representing businesses ranging in size from small, sole proprietorships to some of the largest U.S. companies. The Ohio Chamber works to promote and protect the interests of its more than 8,000 business members while building a more favorable business climate in Ohio by advocating for the interests of Ohio’s business community on matters of statewide importance. By promoting its pro-growth agenda with policymakers and in courts across Ohio, the Ohio Chamber seeks a stable and predictable legal system, which fosters a

business climate where enterprise and Ohioans prosper. The Ohio Chamber regularly files amicus briefs in cases important to its members' interests in courts across the state of Ohio.

The amici curiae organizations filing this brief in support of jurisdiction (collectively, the "Ohio Business Amici") represent thousands of members that contribute to the bedrock of Ohio's economy by employing millions of Ohioans and providing manufacturing, distributing, and retailing of goods and services across the state. As such, the Ohio Business Amici have a compelling interest in statewide, uniform regulation to ensure fair competition and minimize regulatory burdens.

STATEMENT OF THE CASE AND FACTS

The Ohio Business Amici hereby adopt the statement of the case and facts set forth in Appellant's merit brief.

ARGUMENT

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 Ohio Business Amici hereby adopt the arguments asserted by Appellant on Proposition of Law No. 1 to overrule *Canton v. State*. If the Court does not overrule *Canton*, then it should review R.C. 9.681 not in isolation, but rather as part of a statewide, comprehensive legislative enactment regulating tobacco and alternative nicotine products. *See* Proposition of Law No. 2. In doing so, the Court should uphold the constitutionality of R.C. 9.681.

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 matter, not just the challenged statutes in isolation.

Consistent, uniform regulation across the State is crucial to business' economic stability and prosperity, and, therefore, to the economic prosperity of Ohio. To that end, the State has

expressed an overriding interest in the uniform, statewide regulation of tobacco and alternative nicotine products throughout the Revised Code. R.C. 9.681 and the statutes relating to tobacco and alternative nicotine products should be construed together as part of the State's comprehensive regulatory system. Consequently, the Ohio Business Amici have focused their arguments on Proposition of Law No. 2.

The primary impetus behind Appellees' suit is their desire to prohibit the sale of flavored tobacco products (which includes menthol-flavored tobacco products) within their boundaries. *See, e.g.*, Columbus City Code §715.05 ("No person shall give, sell, or otherwise distribute Flavored Tobacco Products in the City of Columbus."). This type of ordinance highlights the need for uniform, statewide regulation of tobacco and alternative nicotine products because Ohio law expressly permits the sale of flavored tobacco. *See* R.C. 5743.01(E). To that end, Revised Code 9.681 prohibits political subdivisions from setting or imposing standards regarding tobacco and alternative nicotine products that are in addition to, different from, or conflict with, standards in State law.¹

The Tenth District erred by finding that R.C. 9.681 is an unconstitutional infringement on Appellees' right to Home Rule under Article XVIII, Section 3 of the Ohio Constitution. In particular, the Tenth District erred by refusing to consider R.C. 9.681 in conjunction with the myriad laws the General Assembly has enacted to regulate tobacco and alternative nicotine products. In doing so, the Tenth District further erred by substituting its own policy preference for that of the General Assembly. While the Ohio Constitution grants municipalities the right of home rule, that right is not absolute. Indeed, both the Ohio Constitution and this Court recognize that the

¹ In addition, R.C. 9.681 allows employees who are 18 years of age and older to sell and handle tobacco products and alternative nicotine products in connection with their job duties. The Tenth District struck down R.C. 9.681 without addressing this provision. The Ohio Business Amici assert that this was also erroneous.

State's interest in general laws override – in other words, preempt – municipal home rule. The State has shown an overriding interest in promoting and ensuring the uniformity of commerce throughout Ohio with respect to tobacco and alternative nicotine products, and R.C. 9.681 is part of the State's comprehensive legislative enactments for doing so.

By contrast, local ordinances regulating the type of tobacco and alternative nicotine products that may be sold within their boundaries prevent uniformity because they subject businesses to different, non-uniform standards and requirements depending upon the local regulation. Small businesses and retail establishments are particularly sensitive to costs and expenses incurred in complying with regulatory actions of political subdivisions, and inconsistent regulation by political subdivisions hinders small businesses and retail establishments from benefiting from free and open competition. The Tenth District's decision undermines the statewide, comprehensive regulatory system the State has created for tobacco and alternative nicotine products. Such a result poses great harm to Ohio businesses by impacting their operations and investments in flavored tobacco and alternative nicotine products that Ohio law expressly permits to be sold by anyone licensed under State – not municipal – law to do so.

A. Policy determinations concerning tobacco and alternative nicotine product regulation are reserved exclusively to the General Assembly.

Under the Home Rule provision of the Ohio Constitution, municipalities have the “broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a state-wide nature or interest.” *State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485, ¶¶14-16 (quoting *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203 (1948)). In determining what constitutes a matter of state-wide interest, “[a] fundamental principle of the constitutional separation of powers among the three branches of government is that the legislative branch of government is ‘the ultimate arbiter of public policy.’” *Arbino v.*

Johnson & Johnson, 2007-Ohio-6948, ¶21 (quoting *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network v. Dupuis*, 2002-Ohio-7041, ¶21). “In fulfilling that role, the legislature is entrusted with the power to continually refine Ohio’s laws to meet the needs of our citizens.” *Kaminski v. Metal & Wire Prods. Co.*, 2010-Ohio-1027, ¶59. And “it is not the role of the courts to establish their own legislative policies or to second-guess the policy choices made by the General Assembly.” *Id.* at ¶61. Indeed, “[i]t is a fundamental principle that the determination of the propriety, wisdom, policy or expediency of legislation is not within the judicial function....” *State v. Mole*, 2016-Ohio-5124, ¶101 (quoting *State v. Parker*, 150 Ohio St. 22, 24 (1948)). So, while the courts may question whether banning the sale of flavored tobacco products is good or bad public policy (see *City of Columbus v. State*, 2025-Ohio-2408, ¶28 (10th Dist.)), where the Tenth District opines about “stem[ming] the sale of flavored tobacco products” and “the lethal scourge of tobacco”), the ultimate determination of such policy is reserved exclusively to the General Assembly.

B. The State has repeatedly preempted local ordinances in the interest of statewide, regulatory uniformity.

For decades, the State has repeatedly and consistently demonstrated an overriding interest in uniform regulation to promote and benefit commerce as a matter of public policy. To that end, the State has repeatedly recognized the importance of avoiding patchwork regulations which hurt businesses and impede commerce. To promote such statewide uniformity, the State has expressly preempted political subdivisions from enacting ordinances in the following commercial arenas:

- Business of originating, granting, servicing, and collecting loans and other forms of credit (R.C. 1.63). This Court upheld the constitutionality of R.C. 1.63 in *Am. Fin. Servs. Ass’n v. City of Cleveland*, 2006-Ohio-6043.
- Purchase, sale, transportation, storage, manufacture, transfer, and taxation of firearms, their components, ammunition, and knives (R.C. 9.68). This Court held that R.C. 9.68 preempted municipal ordinances in *City of Cleveland v. State*, 2010-

Ohio-6318 and *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 2008-Ohio-4605.

- Taxation of businesses (R.C. 715.013 and R.C. Chapter 718)
- Regulation of pet stores (R.C. 956.23)
- Check-cashing business licensing and regulation (R.C. 1315.30)
- Reduced ignition propensity standards for cigarettes (R.C. 3739.15)
- Regulation and licensing of auctioneers, auction firms, and auction sales (R.C. 4707.111)
- Motor vehicle repair operators licensing and regulation (R.C. 4775.11)
- Regulation and licensing of manufactured housing installers (R.C. 4781.14)
- Occupations regulated by the state (R.C. 4798.03)
- Licensing, registration, taxing, or other regulation of transportation network companies, drivers, or services (R.C. 4925.09)
- Regulation of rights and obligations of parties to rental agreements through rent control and rent stabilization (R.C. 5321.20)

The State has also broadly protected the right to use an auxiliary container “for purposes of commerce or otherwise.” R.C. 3736.021. An “auxiliary container” is designed for “consuming, transporting, or protecting merchandise, food, or beverages from or at a food service operation, retail food establishment, grocery, or any other type of retail, manufacturing, or distribution establishment.” R.C. 3767.32(D)(4). The Fourth Appellate District recently struck down Athens’s plastic bag ordinance prohibiting providing single-use plastic carryout bags at retail stores because it conflicted with R.C. 3736.021. *State v. City of Athens*, 2025-Ohio-2652 (4th Dist.). Along with protecting consumers’ right to use auxiliary containers in commerce, the General Assembly has prohibited political subdivisions from imposing taxes, fees, assessments, or other charges on auxiliary containers, on the sale, use, or consumption of such containers, or on the basis of receipts received from the sale of such containers. R.C. 715.013.

The State unquestionably heavily regulates the use, sale, advertising, and distribution of alcohol to the general exclusion of municipalities. *See generally* R.C. Chapter 4301 (Liquor Control Law); Ohio Administrative Code Chapter 4301:1 (Rules of the Ohio Liquor Control Commission). The State limits the alcohol proof that can be sold. For example, wine is limited to a maximum of 21% proof and may not be less than one-half of one per cent. R.C. 4301.01(B)(2)-(5). The State determines when alcohol may be sold. In *Neil House Hotel Co. v. Columbus*, 144 Ohio St. 248 (1944), the City of Columbus enacted an ordinance prohibiting all liquor sales after midnight, despite a state law prohibiting liquor sales after 2:30 a.m. The Ohio Supreme Court explained that the General Assembly “has undertaken to control and regulate the production, sale and dispensing of beer, wine and spirituous liquors throughout the state and has created an agency called the Board of Liquor Control to execute and administer the laws and to regulate the conduct of those who engage in the manufacture and sale of alcoholic beverages.” *Id.* at 251. The Court ultimately held the local ordinance was preempted. *Id.* at 253.

Thus, while municipalities maintain some ability with respect to which businesses can sell liquor, they cannot arbitrarily place their own unique regulations on the sale, taxation, and regulation of alcohol without involvement from the State. Municipalities cannot limit the types of beer (e.g., only locally produced craft beers) or wine (e.g., only red, not white) sold within their borders, nor can they impose lower or higher proof limits on beer, wine, mixed beverages, or spirituous liquor than what Ohio law requires or permits. In the same way, municipalities cannot limit the type of tobacco, flavored or otherwise, that Ohio and federal law permit to be sold. *See Am. Fin. Servs. Ass’n*, 2006-Ohio-6043, ¶34 (holding that local ordinances with varying standards “prevent uniformity”).

These statutory regulations embody the proposition that uniform regulation creates a level playing field for all businesses, regardless of their location, which encourages competition benefiting consumers and the State's economy. The City of Columbus currently prohibits the sale of flavored tobacco products. But Westerville, New Albany, Groveport, Powell, and Grove City do not. This means a business with multiple locations could sell flavored tobacco in Westerville, for example, but not in Columbus. A business with locations only in Columbus would be prohibited from selling flavored tobacco, placing it at a competitive disadvantage with similar businesses in neighboring cities (which sometimes are in proximity to one another).

A uniform regulatory scheme also ensures that businesses face a consistent set of rules across the State. This consistency is essential for businesses to plan and execute their operations without the need to navigate a patchwork of different local laws, which in turn promotes a fair and efficient market environment that benefits both the businesses and the consumers they serve. There are 253 cities and 670 villages in Ohio. More than 500 of those municipalities are home rule jurisdictions. Likewise, Summit and Cuyahoga are home rule counties.² There are also 1,307 townships in Ohio, of which 33 are limited home-rule townships.³ If the Tenth District is correct that each home rule jurisdiction is free to regulate tobacco however it may please, there literally could be more than 500 bodies of substantive local law that sellers or distributors of tobacco and alternative nicotine products would need to be familiar with (along with state and federal regulations).

² See Ohio Secretary of State, *Local Government*, <https://ohioroster.ohiosos.gov/LocalGov.aspx> (accessed January 7, 2026).

³ *Id.*; see Alyssa Bethel, *Members Brief: Limited Home Rule Townships*, Ohio Legislative Service Commission, vol. 134, issue 25 (December 8, 2021), <https://www.lsc.ohio.gov/assets/organizations/legislative-service-commission/files/municipal-home-rule.pdf> (accessed January 7, 2026).

Imagine the logistical nightmare of a company with a single truck delivering to stores in multiple Columbus suburbs where flavored and unflavored, filtered and unfiltered, different cigarette lengths, and pack sizes are legal or illegal depending upon whether one has crossed the boundary between suburbs. A business should not have to review 500+ differing bodies of ordinances that regulate the sale of its products that Ohio law expressly allows to be sold. As this Court has explained in holding local predatory lending ordinances were preempted, “Local ordinances such as the ones enacted by the cities of Dayton and Cleveland prevent uniformity because they subject lenders to different, nonuniform standards depending upon the local municipal regulation.” *Am. Fin. Servs. Ass’n*, 2006-Ohio-6043, ¶34. The same rationale holds true with local tobacco ordinances.

C. The Court must consider R.C. 9.681 in the context of the State’s comprehensive regulatory system for tobacco and alternative nicotine products as a whole.

In *Canton v. State*, 2002-Ohio-2005, the Court held that to constitute a general law for purposes of the Home Rule analysis, a statute must “be *part of* a statewide and comprehensive legislative enactment.” *Id.* at ¶21 (Emphasis added.) The only way to determine whether R.C. 9.681 (or any other statute) is “*part of* a statewide and comprehensive legislative enactment” is to construe that statute along with all other enactments of the same subject matter.

“Considered in isolation, such a provision may fail to qualify as a general law because it prohibits a municipality from exercising a local police power while not providing for uniform statewide regulation of the same subject matter.” *Ohio Ass’n of Private Detective Agencies v. City of N. Olmsted*, 65 Ohio St. 3d 242, 245 (1992). Therefore, “sections within a chapter will not be considered in isolation when determining whether a general law exists. All sections of a chapter must be read in *pari materia* to determine whether the statute in question is part of a statewide regulation and whether the chapter as a whole prescribes a rule of conduct upon citizens generally.”

Mendenhall v. City of Akron, 2008-Ohio-270, ¶27 (cleaned up) (citing *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44 (1982)). See also *State v. Pribble*, 2019-Ohio-4808, ¶12, ¶2 (quoting *State v. Moaning*, 1996-Ohio 413, ¶10) (“It is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law.”); *United Tel. Co. v. Limbach*, 1994-Ohio-209, ¶11 (“All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously.”). For purposes of the general law analysis, the Court applies this canon regardless of whether the statute at issue is ambiguous because the only way to determine if the statute is “part of” a comprehensive enactment is to look at the whole.⁴

The ruling in *City of Cleveland v. State*, 2010-Ohio-6318, is a prominent example analyzing whether a law is part of a comprehensive statewide legislative enactment. There, this Court noted “[t]here are a host of state and federal laws regulating firearms.” *Id.* at ¶17. “[W]hen we consider the entire legislative scheme, as we must,” said the Court, “we conclude that when interpreted as part of a whole,” the provision declaring a need for uniform firearm laws throughout the state “does not unconstitutionally infringe on municipal home rule authority.” *Id.* at ¶29. This Court ruled that it was error for a court of appeals to single out and consider “in isolation” one “general law [R.C. 9.68] that displaces municipal firearm ordinances,” thus “leading to the erroneous conclusion that the statute is not part of a comprehensive statewide legislative enactment.” *Id.* at ¶23.

Similarly, in *Clermont Environmental Reclamation*, 2 Ohio St.3d 44, this Court held that “[t]he section of law questioned ... should not be read and interpreted in isolation from the other

⁴ To the extent that other decisions of the Court appear to stray from this core approach, this case provides the vehicle for the Court to reaffirm its commitment to determining a general law by construing related statutes together rather than in isolation.

sections [of the Revised Code chapter] dealing with the state’s control of the disposal of hazardous wastes. All such sections read *in pari materia* do not merely prohibit subdivisions of the state from regulation of these facilities. Conversely, the statutory scheme contained in this chapter is a comprehensive one enacted to ensure that such facilities are designed, sited, and operated in the manner which best serves the statewide public interest.” *Id.* at 48. *See also Ohio Ass’n of Private Detective Agencies*, 65 Ohio St.3d 242, in which this Court looked at the statutory structure of Chapter 4749 “in its entirety” in ascertaining the uniform statewide regulation of private security personnel. *Id.* at 244-45.

And in *Am. Fin. Servs. Ass’n v. City of Cleveland*, 2006-Ohio-6043, this Court found the General Assembly had enacted consumer mortgage lending regulations as “part of a comprehensive and uniform statewide enactment” even though the applicable provisions (R.C. 1.63 and 1349.25 to 1349.37) were codified in two different chapters. *See id.* at ¶36. Likewise, in *City of Cleveland*, this Court held “the fact that regulations of firearms appear in various code chapters does not nullify the fact that they are all part of a comprehensive enactment concerning firearms.” 2010-Ohio-6318, at ¶21.

Here, by contrast, the Tenth District viewed R.C. 9.681 in isolation and refused to construe R.C. 9.681 “as one overarching statute in combination with all state regulations of tobacco.” *City of Columbus*, 1015-Ohio-2408, ¶25. In doing so, the Court erroneously eschewed substance over form. “Time and again in a wide range of contexts, this court has steadfastly refused to exalt form over substance.” *Makkas v. Unemployment Comp. Bd. of Review*, 18 Ohio St. 3d 349, 351 n.1

(1985). As shown below, R.C. 9.681 fits neatly as “part of” the State’s statewide, comprehensive structure regulating tobacco and alternative nicotine products.

D. R.C. 9.681 is part of the State’s comprehensive enactments designed to provide uniformity in the regulation of tobacco products and alternative nicotine products.

“[T]he cigarette industry is highly regulated by the federal government.” *Marrone v. Philip Morris USA, Inc.*, 2006-Ohio-2869, ¶29. The federal Family Smoking Prevention and Tobacco Control Act grants the Food and Drug Administration (“FDA”) and the Federal Trade Commission (“FTC”) authority to regulate tobacco products. *See* 21 U.S.C. §301 *et seq.*; *id.* at §387n (setting out the FTC’s jurisdiction). The FDA’s authority extends to regulating “all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the [FDA] by regulation deems to be subject to [the Act].” *Id.* §387a(b). The Tobacco Control Act “distinguishes between manufacturing and the retail sale of finished products; it reserves regulation at the manufacturing stage exclusively to the federal government, but allows states and localities to continue to regulate sales and other consumer-related aspects of the industry in the absence of conflicting federal regulation.” *U.S. Smokeless Tobacco Mfg. Co. LLC v. City of N.Y.*, 708 F.3d 428, 434 (2d Cir. 2013); *see* 21 U.S.C. §387p(a)(2) (setting forth the Act’s preemption of certain state and local requirements for tobacco products). Notably as to the question of flavored tobacco, virtually all flavored tobacco other than menthol is prohibited by federal law. 21 U.S.C. §387g. Thus, the substance of municipal angst about flavored tobacco in this case appears to be limited to menthol versus non-menthol cigarettes.

At the state level as illustrated below, Ohio implemented a similar “highly regulated” and comprehensive system for tobacco and alternative nicotine products throughout multiple titles, chapters, and sections of the Revised Code, into which it also integrated federal laws regulating

such products. “A comprehensive enactment need not regulate every aspect of disputed conduct, nor must it regulate that conduct in a particularly invasive fashion.” *City of Cleveland*, 2010-Ohio-6318, ¶21. “[C]omprehensive’ does not mean ‘perfect’”; nor does it mean “‘exhaustive.’” *Id.* (citation omitted). Moreover, there is no constitutional requirement that all provisions of a comprehensive enactment be drafted so as to appear in the same section, chapter, or even title. “[T]he courts cannot tell the legislature what the law *should be* or dictate how the General Assembly should carry out its constitutional responsibilities.” *State ex rel. Jones v. Ohio State House of Representatives*, 2022-Ohio-1909, ¶10 (emphasis in original); *see also City of Toledo v. State*, 2018-Ohio-2358, ¶¶17, 27 (noting “Article II, Section 1 of the Ohio Constitution confers all legislative power of the state on the General Assembly” and “the judicial function does not begin until after the legislative process is completed”) (citation omitted; cleaned up).

Taxation. The State’s tobacco regulation goes back to 1893 when the General Assembly began taxing tobacco wholesalers and retailers. *See* Ohio Department of Taxation Annual Report (Fiscal Year 2023), *Cigarette and Other Tobacco Products Taxes*, p. 30.⁵ Since then, “Ohio has levied an excise tax on cigarettes since 1931 . . . An excise tax has been levied on other tobacco products (OTP) – including cigars, chewing tobacco, snuff, smoking tobacco, and other tobacco products – since 1993 . . . Effective October 1, 2019, Ohio began levying an excise tax on vapor products.” *Id.* at p. 27. The State currently imposes excise taxes on cigarettes, other tobacco products, and vapor products. R.C. 5743.01, 5743.02, 5743.32, 5743.51, 5743.62, 5743.63.

Chapter 5743 has a robust set of regulatory requirements for sellers of tobacco and alternative nicotine products. Transport of tobacco within Ohio requires the consent of the Tax

⁵ Ohio Department of Taxation Annual Report (Fiscal Year 2023), *Cigarette and Other Tobacco Products Taxes*. https://dam.assets.ohio.gov/image/upload/tax.ohio.gov/communications/publications/annual_reports/2023annualreport.pdf (accessed January 7, 2026) [<https://perma.cc/M2WZ-MRZF>].

Commissioner. R.C. 5743.64. Tobacco packages must have stamps affixed reflecting the tax was paid. R.C. 5743.03. Section 5743.33 requires returns to be filed. Records of all purchases and sales must be maintained by both distributors and dealers. R.C. 5743.54, 5743.071. Manufacturers and importers must register with the Tax Commissioner before they sell or distribute to distributors in Ohio. R.C. 5743.66. Likewise, as set forth below, licensing is required.

Tobacco Master Settlement Agreement. Ohio signed the Tobacco Master Settlement Agreement (“MSA”) on November 23, 1998. The General Assembly promulgated two chapters of the Revised Code to administrate and execute the agreement. *See* R.C. Chapter 1346; R.C. Chapter 183. The MSA was entered into by various tobacco industry manufacturers and states. The intent was for those tobacco manufacturers to pay states amounts that would defray costs to the states (e.g., Medicaid) because of adverse health impacts of smoking. Basically, the MSA requires participating manufacturers to make annual payments to the states, including Ohio. The amount of those payments is largely determined by the number of cigarettes sold. In return for such payments, the manufacturers were released from existing and future liability.⁶

Because participating manufacturers were concerned about losing market share to non-participating manufacturers, the MSA required states to enact Qualifying Statutes that subject non-participating manufacturers to similar burdens. If the States do not diligently enforce the Qualifying Statute to the detriment of the market share of the participating manufacturers, they must pay back participating manufacturers an amount called the non-participating manufacturer adjustment. Thus, the market share of participating versus non-participating manufacturers is an integral part of the MSA.

⁶ National Association of Attorneys General, *Master Settlement Agreement*. <https://www.naag.org/wp-content/uploads/2020/09/2019-01-MSA-and-Exhibits-Final.pdf> (accessed January 7, 2026) [<https://perma.cc/M2ES-7C94>].

In Ohio, non-participating manufacturers make payments that are largely equivalent to an escrow fund. R.C. 1346.02; *see also* Ohio Department of Taxation, *XT 2000-02 - Tobacco Information Release - Master Settlement Agreement For All Cigarette Wholesalers And Distributors Of Other Tobacco Products - April 20, 2000*.⁷ That fund is available to pay lawsuit recoveries against that non-participating manufacturer. Every tobacco manufacturer in Ohio certifies to the Ohio Attorney General every year whether it is a participating or non-participating manufacturer. R.C. 1346.05. They also certify information regarding their brand families and units sold. *Id.* The Attorney General maintains a directory of the information certified to him by manufacturers. *Id.* That directory is available for public review at the Attorney General’s website. *Id.* This directory information is utilized for tax purposes by stamping agents and the Tax Commissioner. *Id.*

The General Assembly created the Buckeye Tobacco Settlement Financing Authority “for the sole purpose of purchasing and receiving any assignment of tobacco settlement receipts pursuant to the Tobacco Master Settlement Agreement and issuing obligations to provide financing of essential State functions and facilities.”⁸ *See* R.C. 183.52. Like several other states, in 2007, Ohio securitized the revenue stream it expected from the MSA and issued \$5.5 billion of bonds on that basis.

The State was subsequently involved in arbitration wherein participating manufacturers claimed the State had not diligently enforced its Qualifying Statute and non-participating

⁷ Ohio Department of Taxation, *XT 2000-02 - Tobacco Information Release - Master Settlement Agreement For All Cigarette Wholesalers And Distributors Of Other Tobacco Products - April 20, 2000*, <https://tax.ohio.gov/business/ohio-business-taxes/excise/information-releases/xt200002> (accessed January 7, 2026).

⁸ Office of Budget and Management, *Buckeye Tobacco Settlement Financing Authority* (see “BTSFA” tab). <https://obm.ohio.gov/bonds-and-investors/issuers> (accessed January 20, 2026).

manufacturers had increased market share as a result.⁹ Payments were held in escrow pending resolution of that dispute.¹⁰ On March 4, 2020, the State refinanced \$5.3 billion worth of those bonds, which will be repaid by the State through 2052.¹¹

It should be self-evident that the State's revenue stream from the MSA can be drastically affected by local ordinances that reduce or prohibit cigarette sales. Ordinances that affect market share of manufacturers can cause a non-participating manufacturer adjustment leading to decreased revenue. Likewise, local ordinances that unilaterally depress tobacco sales will also reduce the amount of revenue Ohio receives under the MSA. Ohio could be unable to repay the amounts it has borrowed from securitization of its MSA revenue stream and breach its contract with lenders.

Tobacco Law Enforcement. The Attorney General maintains a Tobacco Enforcement Unit. The Unit describes its role in tobacco sale regulation as follows:

Cigarette and roll-your-own tobacco brand families must be listed on the Attorney General's Tobacco Directory to be legal for sale in Ohio. The Tobacco Enforcement Unit maintains the Attorney General's Tobacco Directory. In addition to maintaining the Tobacco Directory, the Tobacco Enforcement Unit works with the Ohio Department of Taxation to enforce Ohio's Qualifying Statute under the 1998 Tobacco Master Settlement Agreement, the terms of the Master Settlement Agreement, and the Consent Decree. The Tobacco Enforcement Unit also

⁹ Buckeye Tobacco Settlement Financing Authority, *Minutes* (September 21, 2021). https://archives.obm.ohio.gov/Files/Bonds_and_Investors/State_Issuers/Buckeye_Tobacco_Settlement_Finance_Authority/Meeting%20Minutes/9-21-21-BTSFA%20-Minutes.pdf (accessed January 7, 2026) [<https://perma.cc/PW3W-AWY7>].

¹⁰ Rea & Associates, *Buckeye Tobacco Settlement Financing Authority, Regular Audit for the Fiscal Year Ended June 30, 2021*. https://ohioauditor.gov/AuditSearch/Reports/2021/Buckeye_Tobacco_Settlement_Financing_Authority_2021_Franklin_FINAL.pdf (accessed January 7, 2026).

¹¹ Office of Budget and Management, *Buckeye Tobacco Settlement Financing Authority Completes \$5.3 Billion Refinancing*. https://archives.obm.ohio.gov/Files/Agency_Resources/Annual_Reports/OBM_Annual_Report_FY20.pdf (accessed January 7, 2026) [<https://perma.cc/H3UV-H7TQ>].

represents the Ohio Department of Health for matters relating to Ohio’s indoor smoking ban.¹²

Licensing and Registration. Manufacturers and importers of cigarettes are required to be licensed by and to file monthly reports with the Ohio Department of Taxation. R.C. 5743.072, 5743.15, 5743.66. Manufacturers and importers of other tobacco products are required to be registered and to file monthly reports with the Department of Taxation. *Id.* Wholesale cigarette dealers and other tobacco and vapor product distributors are required to be licensed by the Department of Taxation annually. R.C. 5743.15, 5743.61, 5743.62. Retail cigarette dealers must be licensed annually by the county auditor of the county where they sell cigarettes. *Id.*

Types of Tobacco That May be Sold. The State determines the type of cigarettes that may be sold in Ohio. Ohio law defines “cigarettes” as “**any** roll for smoking made wholly or in part of tobacco, irrespective of size or shape, **and whether or not such tobacco is flavored**, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper, reconstituted cigarette tobacco, homogenized cigarette tobacco, cigarette tobacco sheet, or any similar materials other than cigar tobacco.” R.C. 5743.01(E) (emphasis added). So, a properly licensed retailer is authorized under Ohio law to sell “any” cigarette “whether or not such tobacco is flavored” – in other words, whether they contain menthol or not (federal law only permits the sale of tobacco- or menthol-flavored cigarettes. *See* 21 U.S.C. §387g(a)(1)(A)).

Criminal Prohibitions. The State makes it illegal to possess packs of cigarettes that do not bear the State’s tax stamps. R.C. 5743.10, 5743.99, 5743.111, 5743.112.

Distribution Restrictions. The State requires that all cigarettes entering Ohio be transported and shipped only to authorized recipients of tobacco products, such as State-licensed

¹² Ohio Attorney General, *Tobacco Enforcement*. <https://www.ohioattorneygeneral.gov/Business/Services-for-Business/Tobacco-Directory-Search> (accessed January 7, 2026) [<https://perma.cc/2P3N-DLPL>].

wholesale cigarette dealers. R.C. 2927.023, 5743.031. The State requires that all other sale or exchange of cigarettes be in “face to face” transactions. *See id.*

Permitted Cigarette-Brand Sales. The State, through the Ohio Attorney General, maintains a list of cigarette brands that may be sold in Ohio. This list represents the cigarette brands produced by manufacturers that are certified to comply with the Master Settlement Agreement. It is illegal to sell any brand of cigarette in Ohio that is not on that list. R.C. 1346.04 to R.C. 1346.10.

Cigarette Sales. The State regulates the sale of cigarettes under the Unfair Cigarette Sales Act. R.C. 1333.11 to R.C. 1333.21.

Cigarette Ignition Propensity. The State regulates cigarettes so that they have a reduced ignition propensity – in other words, they are expected to self-extinguish when left alone. R.C. Chapter 3739.

Smoking Ban. The State prohibits indoor smoking in public places and places of employment. R.C. Chapter 3794.

Legal Age of Purchasers. The State sets the legal age of purchase, possession, and use of tobacco and alternative nicotine products, which the State raised to 21 in 2019. R.C. 2927.02(B)(1). This is consistent with federal law which raised the minimum age of purchase for tobacco products from 18 to 21. *See* 21 U.S.C. §387f(d)(5). *Cf. City of Cleveland*, 2010-Ohio-6318, ¶20 (finding state firearms law part of a comprehensive enactment, noting that “our state firearm laws also integrate federal firearm laws”).

Vending Machines. The State proscribes where cigarettes, other tobacco products, and alternative nicotine products may be sold from vending machines. R.C. 2927.02(C). “[S]tate law permits the vending of tobacco products without any restrictions in an area within a factory, business, office or other place not open to the general public and in places to which minors are not

generally permitted access ... In all other places the vending of tobacco products is permitted, but restricted to places where the machines are in the immediate vicinity, plain view and control of the owner, operator or employee of the owner or operator.” *Automatic Refreshment Serv. v. City of Cincinnati*, 92 Ohio App. 3d 284, 287 (1st Dist. 1993) (holding city ordinance restricting tobacco vending machines in public places is preempted by R.C. 2927.02(B) because it “expressly forbids what the state law expressly allows, namely the vending of tobacco products in public places”).

Reducing Tobacco Use. The State requires the Department of Health to “prepare a plan to reduce tobacco use by Ohioans, with emphasis on reducing the use of tobacco by youth, minority and regional populations, pregnant women, Medicaid recipients, and others who may be disproportionately affected by the use of tobacco.” R.C. 3701.84. Providers in the State’s Help Me Grow program must report on their progress toward achieving reduction in tobacco use by pregnant women, new parents, and others living in households with children. R.C. 5180.21.

Tobacco Cessation Medication and Services. The State requires its Medicaid program to cover tobacco cessation medications and services. R.C. 5164.10. The State further requires the Department of Medicaid to conduct periodic reviews to determine barriers that Medicaid recipients face in gaining full access to interventions intended to reduce tobacco use. R.C. 5162.136.

Nicotine Replacement Therapy. The State regulates the dispensing of nicotine replacement therapy drugs by pharmacists. R.C. 4729.284.

Advertising by Political Subdivisions. The State prohibits political subdivisions from using public funds to publish, distribute, or otherwise communicate information that promotes cigarettes or other tobacco products. R.C. 9.03.

Gambling Prizes. The State prohibits tobacco from being included in any prize associated with gambling. R.C. 2915.01.

School Curriculum. The State requires that the curriculum established by the board of education of each city, exempted village, and local school district and the board of each cooperative education school district include information on the harmful effects of and legal restrictions against the use of tobacco and electronic smoking devices. R.C. 3313.60.

Collegiate Student Athlete Contracts. The State permits a state institution of higher education, private college, athletic association, conference, or other group or organization with authority over intercollegiate athletics to prohibit student-athletes from entering into a contract providing compensation for use of the student-athlete's name, image, or likeness if such would be associated with a company that manufactures, markets, or sells, or brand that is associated with, a tobacco product, electronic smoking device, vapor product, or product or device that consists of or contains nicotine that can be ingested into the body. R.C. 3376.07.

Residents' Rights in Residential Care Facilities. The State provides that a resident of a nursing home or residential care facility generally has right to use tobacco. R.C. 3721.13.

Through these statutes, the State has manifested its intent to establish comprehensive, uniform standards for tobacco and alternative nicotine products. As such, they provide the comprehensive, statewide framework for the uniform regulation of tobacco and alternative nicotine products into which R.C. 9.681 falls.

E. R.C. 9.681 is needed to preserve the State's comprehensive system of tobacco and alternative nicotine product regulation.

R.C. 9.681 is crucially important to Ohio business. During the past few years, Ohio has seen a proliferation of attempts to regulate business and work rules at the local level. While this may seem logical within a given jurisdiction, it frequently creates chaos for businesses that operate in dozens of jurisdictions or more. With respect to tobacco and alternative nicotine products, R.C.

9.681 was adopted as the General Assembly’s express statement of preemption within the context of the State’s comprehensive regulatory scheme.

Local bans on flavored tobacco products will have tremendous economic impact on local businesses. Menthol-flavored cigarettes accounted for 36% of cigarettes sold in the U.S. in 2022. *See* Federal Trade Commission, *Cigarette Report for 2022, Table 7B, Domestic Market Share of Menthol and Non-Menthol Cigarettes* (2023) (“*Cigarette Report*”).¹³ Allowing municipalities to prohibit the sale of flavored tobacco products – which Ohio law expressly otherwise permits to be sold – opens the floodgates to other, even more onerous municipal regulation. For example, a municipality seeking to reduce smoking could decide to limit the sale of cigarettes to those 68-72 mm and 110-121 mm in length. Given these sizes represent just 3% of cigarettes sold in the U.S., that ordinance would effectively eliminate 97% of cigarettes. *See Cigarette Report*, Table 6B. Or the municipality decides that only non-filtered cigarettes may be sold within its boundaries. Given that 0.2% of cigarettes sold in the U.S. in 2022 were non-filtered, this would effectively eliminate all cigarettes from being sold. *See Cigarette Report*, Table 5B.

The Tenth District’s ruling undermines the integrity of the State’s comprehensive, uniform regulation of tobacco and alternative nicotine products. Under Ohio law, “no person shall engage in this state in the wholesale or retail business of trafficking in cigarettes or in the business of a manufacturer or importer of cigarettes without having a license to conduct each such activity” by a county auditor for retail businesses or the Tax Commissioner for manufacturers or importers of cigarettes. R.C. 5743.15(A). Thus, once a person has such a license, they can sell “cigarettes.” It is the State – not home rule municipalities – that determines who may sell, manufacture, or import

¹³ Federal Trade Commission, *Cigarette Report for 2022, Table 7B, Domestic Market Share of Menthol and Non-Menthol Cigarettes* (2023). https://www.ftc.gov/system/files/ftc_gov/pdf/2022-Cigarette-Report.pdf (accessed January 7, 2026) [<https://perma.cc/W37P-R2NW>].

cigarettes in Ohio. And the State has determined that “cigarettes” are “any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, *and whether or not such tobacco is flavored . . .*” R.C. 5743.01(E) (emphasis added).

But the Columbus City Ordinance provides: “No person shall give, sell, or otherwise distribute Flavored Tobacco Products in the City of Columbus.” Columbus City Code §715.05(A). Thus, the Ordinance facially prohibits the sale of “Flavored Tobacco Products” (e.g., menthol) that Ohio law expressly permits to be sold. *See* R.C. 5743.01. “This is a classic licensing conflict under our home-rule precedent. We have consistently held that a municipal-licensing ordinance conflicts with a state-licensing scheme if the ‘local ordinance restricts an activity which a state license permits.’” *Morrison*, 2015-Ohio-485, ¶26 (citations omitted). In such cases, “any local ordinances that seek to prohibit conduct that the state has authorized are in conflict with the state statutes and are therefore unconstitutional.” *Am. Fin. Servs. Ass’n*, 2006-Ohio-6043, ¶46. Ordinances such as the Columbus City Ordinance at issue highlight the need for the General Assembly’s express statement of preemption through R.C. 9.681.

R.C. 9.681 is part of a comprehensive regulatory scheme to regulate the sale and use of tobacco and alternative nicotine products. The General Assembly expressed therein that preemption is required to prevent undermining and destabilizing the State’s tobacco and alternative nicotine market. The State itself defines the permissible boundaries for sales and use of tobacco products in comprehensive fashion. The State itself weighs the potential harm of such goods against the countervailing freedom it has granted to its citizens to purchase and use such products. The State itself has determined the increased medical cost to it and how that cost will be defrayed by industry participants based upon the volume of such products sold. The State has made these policy determinations – including the determination to permit the sale of flavored tobacco – and

“a court has nothing to do with the policy or wisdom of a statute.” *State ex rel. Ohio Congress of Parents & Teachers vs. State Bd. of Educ.*, 2006-Ohio-5512, ¶20. None of the arguments over whether, as a matter of public policy, it would be better to ban flavored tobacco “concerns a court of law.” *Bd. of Trs. of the Tobacco Use Prevention & Control Found. v. Boyce*, 2010-Ohio-6207, ¶30. There simply is no room for 500+ municipalities to insert themselves into this complex, multi-faceted state and federal regulatory scheme and add random prohibitions based upon personal predilections of local officials (e.g., “no flavored tobacco”). Such local prohibitions will inevitably lead to unintended consequences, the pain of which will be borne by the State and industry participants.

This overriding state interest generates millions of dollars in tax revenue for the State, which justifies its interest in preserving and regulating, among other things, the sale of tobacco and alternative nicotine products. In fiscal year 2023, the State collected \$827.4 million in tax revenue from the sale of cigarettes and other tobacco products. Ohio Department of Taxation Annual Report (Fiscal Year 2023), *Cigarette and Other Tobacco Products Taxes*, at p. 30.¹⁴ The State needs this tax revenue to repay the \$5.5 billion of bonds it issued. Notably, this tax revenue has steadily declined since 2019 (from \$918.2 million) (see *id.*), so the State undoubtedly has an interest in not having it decline further as it would inevitably do if municipalities were allowed to ban the sale of flavored tobacco and alternative nicotine products.

CONCLUSION

For the above reasons, the Ohio Business Amici therefore respectfully urge this Court to reverse the ruling of the Tenth District. That decision destabilizes uniformity and reliability, which

¹⁴ Ohio Department of Taxation Annual Report (Fiscal Year 2023), *Cigarette and Other Tobacco Products Taxes* https://dam.assets.ohio.gov/image/upload/tax.ohio.gov/communications/publications/annual_reports/2023annualreport.pdf#page=30 (accessed January 7, 2026) [<https://perma.cc/M2WZ-MRZF>].

are essential components of commerce within the State of Ohio. Allowing political subdivisions to ban flavored tobacco and alternative nicotine products will have a dramatic economic impact on Ohio businesses that sell cigarettes, whereas a uniform regulatory system of laws supports a stable, efficient, and fair business environment essential for economic prosperity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of January 2026, a true and correct copy of the above and foregoing document was served to all counsel of record on all parties below.

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