

In the
Supreme Court of Ohio

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

BRIEF OF *AMICI CURIAE*
THE OHIO MAYORS ALLIANCE AND
THE OHIO MUNICIPAL ATTORNEYS ASSOCIATION

Elaine Poon (VA 91963)*
Selin Cherian-Rivers (DC 458487)*
PUBLIC RIGHTS PROJECT
490 43rd Street, Unit #115
Oakland, CA 94609
(510) 738-6788
elaine.poon@publicrightsproject.org
selin.cherian-rivers@publicrightsproject.org

Sarah Biehl (0083423)
Policy Director
Ohio Mayors Alliance
10 W. Broad St., Suite 1520
Columbus, Ohio 43215
(773) 517-1154
sarah@ohiomayorsalliance.org

*Counsels for Amici Curiae Ohio Mayors
Alliance and Ohio Municipal Attorneys
Association*

**Pro Hac Vice in process*

Dave Yost (0056290)
Ohio Attorney General
Mathura J. Sridharan(0100811)
Solicitor General (Counsel of Record) Zacher
P. Keller (0086930)
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980
Mathura.Sridharan@OhioAGO.gov

Counsel for Appellant State of Ohio

Richard N. Coglianese (0066830)
Matthew D. Sturtz (0095536)
Aaron D. Epstein (0063286)
Micah L. Berman (0074356)**
77 North Front Street, 4th Floor
Columbus, Ohio 43215
(614) 645-7385 rncoglianese@columbus.gov
mdsturtz@columbus.gov
adepstein@columbus.gov

Counsel for Appellees City of Columbus, et al

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amici are two associations comprised of public servants dedicated to direct democracy and the betterment of the State of Ohio. The Ohio Mayors Alliance (OMA) and the Ohio Municipal Attorneys Association (OMAA) write to urge this Court to uphold the original intent of the Ohio Constitution and to keep governance closest to its people. As elected officials and officers of the courts of Ohio, *amici* have an interest in upholding our state's laws and protecting direct democracy. Home rule is a pillar of this commitment to the rule of law for *amici* and a bedrock doctrine for Ohio.

Formed in 2016, the OMA is a bipartisan coalition of mayors of Ohio's largest cities and suburbs that leverages mayors' collective voices and improves their advocacy efforts at the state and federal level. Our mission is to strengthen Ohio's cities and metropolitan regions through collaboration, communication, improved advocacy, and stronger partnerships with policymakers. We advance policy priorities that bring communities and leaders together, ensure a high quality of life for our citizens, and strengthen the economic vibrancy of our communities and our State. Our core functions include connecting cities to resources, promoting mayors and bipartisanship, sharing best practices, and state and federal advocacy that strengthens Ohio.¹

The OMAA is an Ohio non-profit corporation incorporated in 1953 by city and village attorneys who saw the need for a statewide attorneys' association to serve the interests of Ohio municipal government. Currently, the OMAA represents a majority of Ohio's cities and villages. The OMAA is closely aligned with the Ohio Municipal League. On a national basis, the OMAA is affiliated with the National League of Cities, and the International Municipal Lawyers

¹ Ohio Mayors Alliance Website, *Our Work*, <https://ohiomayorsalliance.org/our-work/> (accessed March 9, 2026).

Association. The Executive Director of the OMAA is a registered lobbyist and works with the Ohio legislature on matters of concern to municipalities. The OMAA has been accredited by the Supreme Court of Ohio as a sponsor for Continuing Legal Education Programs for municipal attorneys. It is dedicated to supporting attorneys and prosecutors who serve Ohio's municipalities and runs active listservs of local government attorneys in both civil (with over 400 participants) and criminal law (with over 200 participants).

Local control is not theoretical for *amici*. *Amici* and our members, including Ohio mayors and the municipal lawyers who support them, have a unique and deep understanding of direct democracy. Ohio mayors and municipal attorneys are residents of the communities we lead, and home rule is essential to address the real issues local community residents face in the places where we live, be it public safety, local roads, housing concerns, or public health. We experience the crucial role of home rule when we go to the grocery store, or drop off our kids at school, and hear from the voters who elected us in the communities where we live. Local government is the first stop for constituents to see democracy in action. It is the first government to respond in crisis and act on practical problems residents face every day. Without local control, the direct link between the government and its people breaks. Local government will lose the flexibility and nimbleness it needs to quickly and effectively respond to constituent needs. If home rule is eroded—or as the State requests—eliminated, it could threaten the trust residents have for government, and even democracy itself.

Protecting and defending the Ohio Constitution, including Ohio's strong and unique home rule doctrine, are core to both *amici's* mission and purpose. Strong home rule is central to the identity of, and good governance in, Ohio. This sound and foundational doctrine implicates the work *amici* and its members do every day, as well as the Ohioans we represent. Ohio municipal

lawyers depend on the stability of nine decades of jurisprudence in advising their clients. Ohio mayors cannot effectively serve their communities if their local decisions are constantly overruled by state legislators who neither live nor work in their cities. Both *amici* rely on a promise that the original wishes of the convenors will be respected in enacting a sweeping and powerful Home Rule Amendment in their Constitution. *Amici* therefore write to respectfully request that the Court protect and defend Ohio’s home rule.

INTRODUCTION

In the face of staggering statistics in mortality, youth addiction, and disease, several Ohio municipalities banned flavored tobacco to protect the most vulnerable residents within their jurisdictions. *See Columbus v. State*, 2025-Ohio-2408, ¶ 3 (10th Dist.) (“App.Op.”). Almost immediately, the State stepped in, stripping municipalities’ authority to protect youth from a dangerous cycle of tobacco-related disease and death. *Id.* at ¶ 4. On surface, this may appear to be a difference in policy regulating tobacco. Not so. The Ohio Constitution’s Home Rule Amendment gives municipalities the power to make laws on health and safety matters within their jurisdictions so long as they do not conflict with state laws that apply to all Ohioans. Ohio Const., art. XVIII, § 3. Rather than affirmatively using its own legislative powers to prescribe or prohibit access to flavored tobacco products, the State instead seeks to “legislate” by ending home rule. It may not do so.

The municipalities faced no conflict when they enacted their ordinances, as the State has not taken a stance on youth and flavored tobacco. Instead, the State passed a law to restrict municipalities’ power to make any law on the health and welfare of the communities regarding tobacco use. R.C. 9.681(B)(1). The State made its purpose clear, stating that “...it is the intent of the general assembly to preempt political subdivisions from the regulation of tobacco products and

alternative nicotine products.” *Id.* at (D). Frustrated that it does not have complete dominion over municipalities in the field of tobacco legislation, the State asks this Court to undermine the fundamental principles of the Home Rule Amendment by excising the third and fourth prongs of the test this Court devised in *Canton v. State* to determine whether a state law is an “unambiguous “general law” that applies to everyone in Ohio or an unlawful attempt to usurp municipal authority under the Home Rule Amendment. *Canton v. State*, 2002-Ohio-2005, ¶ 10-12. The State’s proposed standard (or lack thereof) functionally eliminates home rule. Merit Brief of State-Appellant at 8, (hereinafter “Appellant’s Merit Brief at”). To support its argument, the State urges the Court to accept its revisionist history and its notion that Ohioans at the Constitutional Convention of 1912 did not indeed pass one of the most groundbreaking Home Rule Amendments in the country, safeguarding against the very mischief the state legislature has attempted here.

Under the State’s version of home rule, there would be no limit on state statutory power, no guidance to cities about what they do and do not have power to decide, and complete deference to state legislators on what would qualify as a general law. While the State claims that delineating the powers of the municipalities and the State is “beside the point,” history tells us that Ohioans who voted to amend the Ohio Constitution in 1912 and the Ohioans of today would disagree. Appellant’s Merit Brief at 40. For the reasons stated below and ably argued by Appellee-municipalities, *amici* ask this Court to affirm the ruling of the Tenth District Court of Appeals to uphold home rule and maintain the seminal *Canton* test to balance the constitutional authority of municipalities to legislate for the safety and welfare of their residents.

STATEMENT OF THE FACTS AND CASE

Amici adopt the Statement of the Case and the Facts as set forth in Appellee’s brief.

ARGUMENT

I. LOCAL RULE IS ESSENTIAL TO DEMOCRACY AND GOOD GOVERNANCE

Home rule is a quintessential constitutional principle empowering Ohio cities and villages to govern themselves in local matters without first needing approval from the State. It is meant to strengthen local democracy by allowing communities to make decisions that reflect their own needs and priorities. It also grants cities the ability to govern themselves in the ways that maintain the unique character and personality of Ohio's diverse local regions and cultures, while ensuring that the government closest *to the people* is empowered *by the people* to uphold local values.²

The ability to address issues unique to each community is demonstrated by the instant case, wherein evidence in Columbus showed that flavored tobacco products harmed specific populations within the city. Pls' Am. Compl., ¶ 91-94. Home rule permits local government to address their particular and local needs because the state legislature may not always have the knowledge or willingness to prioritize, protect, and advance the health and safety of local communities. App.Op., ¶ 28. For example, in the absence of state legislative action to protect public health, the municipalities led the charge to forbid tobacco sales to residents under 21 years of age within their jurisdiction, saving the lives of countless young people. Appellee's Brief in Opposition to Jurisdiction at 3. Meanwhile, it took the state legislature another three years to follow suit and issue a statewide ban for such sales. *Id.* This example and the case at bar illustrate why municipalities are best positioned to understand the welfare of their communities and the allocation of resources required to swiftly and effectively tackle the crisis of tobacco addiction in their jurisdictions.

² Richard Briffault, *Home Rule for the Twenty-First Century*, 36 Urb. Law. 253, 258 (2004).

A. The *Canton* Test Must be Preserved to Guard Against Unconstitutional Repeal of the Home Rule Amendment.

To determine the exact contours of home rule authority, this Court created the *Canton* test, which is rooted in the text of the Ohio Constitution’s Article XVIII, Section 3 and consolidates nine decades of case law discerning the meaning and function of the Home Rule Amendment. The *Canton* test assesses whether a state law is an unambiguous “general law” or an unlawful attempt to circumvent or restrict municipal authority under home rule. *Canton*, 2002-Ohio-2005, ¶ 10-12. Specifically, courts consider whether 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. This is no veiled attempt to repeal a constitutional provision. The State’s proposal boils down to reverting us back to pre-1912 governance before the Home Rule Amendment was enacted and municipalities could only make health, safety, and welfare laws for their localities if the state explicitly granted them permission. The State has acknowledged, “[t]hat’s what the Appellees essentially argue—that allowing the state to simply say this is a matter of statewide concern makes the Home Rule Amendment illusory. But that *is* the power of the general assembly—to make policy decisions and determine what it is going to regulate and what it is not going to allow municipalities [to regulate].” (Emphasis added.) Audio Recording of Tenth District Court of Appeals Oral Argument, *City of Columbus v. State*, No. 24AP-333, at 15:00-15:46.

The State urges this Court to reject the third and fourth prongs of the *Canton* test, which asks whether the state law is an attempt to limit the lawmaking authority of municipalities and does not, in fact, prescribe or prohibit the conduct of all Ohio residents. Appellant’s Merit Brief at

32-36. Under the State’s proposal to bisect *Canton*, what we are left with is the sole question of whether a statute is uniform in application when evaluating potential conflict between state and local law. The Ohio Constitution already demands that all laws enacted by the state legislature be general in application. Ohio Const., art. II, § 26. In other words, by definition and by Constitutional mandate, *all laws* enacted by the state legislature must be “general laws” as defined by the state. Thus, the application of the State’s argument renders the principle of home rule meaningless. Shrinking the test for constitutionality in this manner creates a scenario where the state will always win. This cannot stand.

By proposing to abandon the *Canton* test without reasonable replacement to assess whether state law usurps home rule, the State asks this Court to effectively read home rule out of the Ohio Constitution. In essence, the State asks that *all laws passed by the state legislature preempt municipal actions*. This type of preemptive governance is internally inconsistent and contrary to the history of the constitutional convention. The strong language of the Home Rule Amendment refutes the State’s approach: “[s]ubject to the requirements of Section 1 of Article V of this constitution, municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Ohio Const., art. XVIII, § 3 (“the Home Rule Amendment” or “the Amendment”). Read together with article II, the State’s argument amounts to an unlawful constitutional repeal of the Home Rule Amendment. *See also* Appellee’s Br. In Opposition to Jurisdiction at 9. By interpreting the term “general laws” without adherence to the purpose of the Home Rule Amendment—safeguarding local control—the Amendment loses all meaning.

B. The Government Closest to the People Governs Local Interests Best.

The *Canton* framework has guided Ohio municipalities, including *amici*, in determining the scope and authority of their home rule powers for over 25 years. Establishing and adhering to a framework for analyzing the existence of a general law was meant to provide local governments the guidance they need to determine whether they have authority to make laws setting forth police, sanitary, or similar regulations. Over the years, many of the cities represented by *amici* have attempted to regulate various police, sanitary, or similar issues, only to later be preempted from passing the law that they already enacted by a state statute that declares only the State can address the issue.³

This back and forth—as is evidenced by the facts in this case—wherein the City of Columbus attempted to regulate flavored tobacco and was effectively overruled by the legislature, creates a situation where local democratic power is undermined and reversed by state legislators who neither live in nor represent the cities they seek to undermine. The present case epitomizes the headache created by such unlawful legislative actions for municipalities such as *amici*. The state legislature’s assault on the principle of home rule and the quest to eliminate home rule has been relentless.⁴ Indeed, the legislature has an established pattern of restricting home rule by anticipatory preemption or by legislating after the municipalities have enacted an ordinance to protect their communities, creating a patchwork of challenges and confusion for Ohioans. When

³ Matthew Mahoney, *Home Rule in Ohio: General Laws, Conflicts, and the Failure of the Courts to Protect the Ohio Constitution*, 67 Clev. St. L. Rev. 113, 115 (2019) (collecting cases).

⁴ See, e.g. R.C. 1.63 (preempting regulation of predatory lending); R.C. 4111.02 (prohibiting political subdivisions from setting a minimum wage); R.C. 4939.0315 (restricting the regulation of cell phone towers); R.C. 956.23 (preempting the regulation of pet stores). This is by no means an exhaustive list.

the state legislature passes a law like this, *amici* are the ones left to explain to constituents why their duly enacted ordinance has come into question.

In effect, home rule preemption, like the state law enacted in this case to eliminate all local regulation of tobacco products, is a response to a city action that some state legislators disagree with. R.C. 9.681 acts as an *a fortiori* example, as it does not even purport to set a floor for regulation, as is typical for such home rule disputes. In fact, Section (B)(1) contains a clause which can only be described as regulation for regulation's sake, prohibiting municipalities from "[s]etting or imposing standards, requirements, taxes, fees, assessments, or charges of any kind regarding tobacco products or alternative nicotine products *that are the same as or similar to...* any standard, requirement, tax, fee, assessment, or other charge established or authorized by state." (Emphasis added.) R.C. 9.681.

Eliminating the municipalities' ability to enact local laws that mirror or support state law that advances public health is especially troubling. Also disturbing is the fact that R.C. 9.681 wipes out municipalities' ability to enact tobacco retail licenses, which allow them to create a licensing system that collects fees from tobacco retailers and use those fees to enforce the 21 years of age restriction on the sale of tobacco to those under 21. Resolving political disagreements between an elected city government and the state legislature by rendering home rule obsolete is *not* an appropriate use of the general lawmaking authority of the state legislature. "This sort of law is and always was invidious to the text and spirit of the Home Rule Amendment." *See App.Op.*, ¶27. If this Court opens the door for the State's argument, it will invite draconian legislation like this and could herald the end of local control in Ohio.

In effect, what the legislature did in this case, and what the State proposes that the Court do in response, grants the state legislature authority over local lawmaking power that the Ohio

Constitution never grants. The State seeks to elevate centralized policymaking by non-local state lawmakers above all determinations and policy choices of local elected officials who are acting on behalf of their local communities. This exercise of state power to preempt local control would mean that cities' "home rule authority" essentially means nothing except what the state legislature specifically permits cities to do. The effect is to return lawmaking supremacy to the Ohio General Assembly, gutting the purpose and plain wording of Section 3, Article XVIII of the Ohio Constitution.

II. THE CONSTITUTIONAL DRAFTERS INTENDED TO CREATE A ROBUST HOME RULE DOCTRINE

The State spills much ink on its claim that it wishes to honor the original intent of the Home Rule Amendment, but instead recasts history to establish its mistaken version of original intent. It excises much of the history leading up to the 1912 Constitutional Convention, which shows a fervor for a robust home rule doctrine as a primary impetus for holding the convention. It ignores speeches delivered by the delegates, over the course of several months, that demonstrate a clear intent to enact what some called "the strongest home rule in the nation."⁵ The convenors of the constitutional convention expressed the original intent of the Home Rule Amendment vehemently and unequivocally. In light of the robust historical context, the phrase "general laws" cannot possibly mean general applicability that overrides any consideration of municipal governing authority.

⁵ New York Times, *OHIO CONSTITUTION HAS MANY CHANGES; Convention Proposes Forty-two Amendments for Popular Vote in September* (June 2, 1912), <https://www.nytimes.com/1912/06/02/archives/ohio-constitution-has-many-changes-convention-proposes-fortytwo.html?login=email&auth=login-email> (accessed March 9, 2026).

The State invites the Court to abandon the *Canton* test and take up their version of the “original” meaning of the term “general laws” as one might have understood it in the time of the Constitutional Convention of 1912. On this point—that the Court should read the Amendment through the lens of original intent—*amici* and the State agree. What the history, text, and intent of the Amendment means is where *amici* and the State diverge. The original, progressive, and powerful intent to make municipal self-governance a pillar of Ohio law must be honored when assessing the application of the Home Rule Amendment. The *amici* urge the Court to look to the purpose and intent of the Amendment through the eyes of the delegates and the voters they represented in 1912—through their words and the events surrounding the Convention—rather than the bare text of the dictionary terms of that time. The logical conclusion, if one follows the original purpose and intent of the proponents of the Home Rule Amendment, is that *Canton* and the Tenth District Court of Appeals decision must be upheld.

A. The Progressive Movement and the Call for a Convention⁶

The idea of home rule was incubated in overlapping periods of the Gilded Age and the Progressive Era when America experienced a period of rapid economic growth, urbanization, consumerism, the exponential rise of industrialists and businesses, numerous financial crises and corruption resulting in significant income disparities among the population and little protection for low and middle-class workers and minorities, coupled with a reform movement to make American society a better and safer place.⁷ Ohio, like the rest of the country during this period, experienced

⁶ Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution: A Reference Guide* Scholarship Collection (2004).

⁷ Library of Congress, *U.S. History Primary Source Timeline – Progressive Era to New Era, 1900 to 1929 Overview*, <https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/progressive-era-to-new-era-1900-1929/overview/> (accessed March 9, 2026); Library of Congress Research Guides, *American Business: The Gilded Age and the Progressive Era*, <https://guides.loc.gov/gilded-age->

tremendous economic growth but also contended with extreme poverty, urban slums, and periods of economic depression. This economic and social divide fomented deep distrust in the State government's ability to prioritize the working people's interests.⁸ Many social and political reformers, or "progressives," saw local control as a solution to the inequalities in Ohio.⁹

Frustrated with State government's corruption, unregulated and hazardous working conditions, unsanitary living conditions, subpar wages, and other safety, economic, and welfare concerns, Ohio voters sought to reform Ohio governance and approved the calling of a constitutional convention.¹⁰ A vote to determine whether to hold a constitutional convention normally would have been on the ballot in 1911, but the public support for reform was so great that the General Assembly placed the measure on the ballot early and Ohioans voted with a resounding yes to hold the convention.¹¹

When the delegates of the 1912 Constitutional Convention gathered to debate the future of Ohio, their constituents sent them with a strong sentiment of "pent-up demand among the various groups for such reforms as municipal home rule, legal protection of workers, improvements in court procedures, and woman suffrage."¹² The delegates were sent with an agenda to change the

business#:~:text=Between%20the%201870s%20and%20the,extend%20it%20to%20the%201920s (accessed March 9, 2026).

⁸ Mahoney, *supra* note 3 at 125.

⁹ Steven H. Steinglass, *The Ohio Constitution: Its History and Its Future*, The State Court Reporter, May 21, 2025, <https://statecourtreport.org/our-work/analysis-opinion/ohio-constitution-its-history-and-its-future> (accessed March 9, 2026).

¹⁰ Common Cause Ohio, *Ohio Ballot History-Our Constitutional Right Since 1912*, April 3, 2023, <https://www.commoncause.org/ohio/articles/ohio-ballot-history-our-constitutional-right-since-1912/> (accessed March 9, 2026).

¹¹ The vote passed by a ten to one margin. Steinglass, *supra* note 6 at 45.

¹² *Id.*

course of governance in Ohio towards direct democracy.¹³ Convention delegate and later Ohio Congressman Stanley Bowdle captured this sentiment when he declared that “[w]e were summoned here in response to a spirit of American restlessness and progressiveness that is now rampant from Maine to California.”¹⁴ Indeed, the convention delegates reiterated their dedication to progressivism so many times that one delegate lamented the excessive speechmaking and grandstanding as to who brought more progressive credentials.¹⁵

President Theodore Roosevelt, among the leading progressives of the era, addressed the convention and advocated for the rejection of corporate control of government to direct democracy, one of the primary goals of the convention.¹⁶ He proclaimed that “[w]e believe that the power of money is on one side and the enthusiasm for liberty on the other.”¹⁷ Roosevelt also declared that it was the height of “false statesmanship...to seem to give the people full power and at the same time trick them out of it. Yet this is precisely what is done in every case where the State permits its representatives, whether on the bench or in the legislature or in the executive office, to declare that it has not the power to right grave social wrongs....”¹⁸ Considering the large body of evidence that supports the preservation of local governmental authority to address health, welfare, and safety

¹³ *Id.*; Paul J. Lysobey, *Municipal Minimum Wage Ordinances in Ohio: A Home Rule Analysis*, 67 Clev. St. L. Rev. 93, 96 (2019) (quoting Landon Warner, *Ohio's Constitutional Convention of 1912*, 61 Ohio St. Archaeological & Hist. Q. 11, 13 (1952)).

¹⁴ *2 Proceedings and Debates of the Constitutional Convention of the State of Ohio*, 2004 (1913) (statement of Delegate Bowdle, evening session May 31, 1912). Hereinafter, “*Proceedings*, at”.

¹⁵ *1 Proceedings and Debates of the Constitutional Convention of the State of Ohio*, 867 (1912) (statement of Delegate Ulmer).

¹⁶ Ohio Capital Journal, *A Charter of Democracy: Teddy Roosevelt's speech to the 1912 Ohio Constitutional Convention*, March 31, 2023, <https://ohiocapitaljournal.com/2023/03/31/teddy-roosevelts-speech-to-the-1912-ohio-constitutional-convention/> (accessed March 9, 2026).

¹⁷ *Proceedings* at 2094 (statement of The President, Afternoon Session, August 26, 1912).

¹⁸ Ohio Capital Journal, *Supra* note 16.

concerns within the municipalities, the State’s counterfactual description of the “original intent” of the Home Rule Amendment fails. Appellant’s Merit Brief at 40.

B. The Wise and Wholesome Doctrine of Home Rule¹⁹

The 1912 Convention was indeed a sea change for municipal self-governance in Ohio propelled by progressivism, frustration with inequality, and state interference.²⁰ It “led to an era of state constitutional change toward lessening state legislative interference in the affairs of municipal governments, particularly the larger cities.” (Cleaned up.)²¹ Yet, the State creates a fantastical retelling of the 1912 Constitutional Convention, significantly downplaying the prominence and major change the convention brought about. Appellant’s Merit brief 44. On the contrary, the fervent language of the delegate speeches during the constitutional convention speaks to a goal of radically changing state and local governance. One delegate proudly declared, “[w]e agreed that was the best possible thing that could be done for the cities. Let them have self-government in all matters that do not pertain to the state as a whole” (Mr. Elson, May 7, 1912, Morning Session).²² Another delegate proclaimed, “Gentlemen of the Convention, cities of Ohio are well able to take care of themselves. They only want the privilege of looking out for their own salvation. They do not want to be run by men who do not know their problems” (Mr. Bigelow, May 7, 1912, Morning Session).²³ The delegates plainly stated their sentiment on home rule:

The advocates of home rule merely insist that municipalities be allowed to solve their own problems and control their own affairs, independent of outside authority, whether that authority be a monarchy, an oligarchy or the people of a whole state.

¹⁹ *Supra* note 15, 345 (statement of Mr. Jones).

²⁰ Mahoney, *supra* note 3 at 124.

²¹ *Id.*

²² *Proceedings* at 1649.

²³ *Proceedings* at 1660.

In short, the cities merely ask that the principle of self-government be extended to them.

Mr. Crosser, April 30th, 1912, Morning Session.²⁴

Delegates sought to carry out their progressive agenda by moving the power center from the corporate-dominated state legislature to the towns, counties and villages—where rural interests were being ignored.

They aimed to allow for equitable distribution of resources and above all, to allow for the commonsense principle of allowing those directly impacted by problems to present and implement their own solutions. One delegate aptly stated, “I hope, therefore, you will give us this much home rule. I want the members of this Convention to see justice done to the cities. The farmer is just as much interested in good city government in the cities as the citizens of cities themselves are. The good of the cities is the good of the whole state.” (Mr. Smith, April 30th, 1912, Morning Session).²⁵ Throughout the home rule discussion, the convenors repeated the theme of self-governance and rejection of a uniform legislative approach that failed to account for the different needs of Ohio localities. The overwhelming focus and intensity of the support surrounding the adoption of the Home Rule Amendment belies the State’s attempt to downplay its significance and importance during the convention. It was no mere attempt to cease seeking legislative approval from the state for local governance. It was a foundational shift in co-sovereignty that allowed municipalities not only to respond to the health and safety concerns of their communities, but to go further than the state in such matters.

As described above, the delegates and the public who sent them also viewed home rule as a cure for the corporate control by and lack of attention to rural interests of the state legislature.

²⁴ *Proceedings* at 1483.

²⁵ *Proceedings* at 1464.

I am for home rule not only on the road proposition, but on every proposition that comes before this Convention. Why should we not have it? Why should we want this money expended by a lot of kid-gloved, high-hatted gentlemen from the farmers to know something about it? I want the farmers to know something about it. I want them to have some say about where this money shall be expended and how.

Mr. Pierce, February 19, 1912, Evening Session.²⁶

By shifting power from the central state government into the cities and counties, the delegates believed they could counteract the scourge of rampant inequality and the corrupt forces of special interests.

Across all issues, the localities rallied for the principle of home rule. The delegates viewed home rule as a commonsense approach to seat governance with “the people of the county who know best,” or closest to problems which need to be solved. (Mr. Jones, February 13, 1912, Afternoon Session).²⁷ Speaking on the governance of local roads in relation to home rule, several speakers emphasized the value of local government’s proximity to the issues at hand. One delegate declared, “[t]he cities of the state have a right to home rule. We cannot solve their problems and they cannot solve ours, and we owe it to the toilers of the cities who are trying to work out their salvation...and give these people the right to home rule.” (Mr. Hursh, April 30th, 1912, Morning Session).²⁸ Another delegate stated, “[i]n other words, you will construct the good roads and leave the bad roads unconstructed. I say that is wrong. It is a violation of the principle of home rule. The money should be expended by those over whom the people have control.” (Mr. Pierce, February 13, 1912, Morning Session).²⁹ The very words of the convention attendees demonstrate the

²⁶ *Proceedings* at 350.

²⁷ *Proceedings* at 279.

²⁸ *Proceedings* at 1471.

²⁹ *Proceedings* at 263.

conviction and determination to bring about significant change for local governance that cannot be denied.

The State attempts to recast the delegate Knight's presentation of the Home Rule Amendment to fit the mold of its ahistoric interpretation of "general laws."³⁰ However, these references to Mr. Knight's remarks are taken out of context and do not carry the meaning that the State implies. Mr. Knight's remarks provided in the State's brief were specifically refuting skeptics of the home rule who feared that the amendment would render municipal law superior to that of the state or even "detach cities from the state."³¹

Mr. Lampson: I am very much in doubt as to the power contained in that section. It looks as if it might be very extensive.

Mr. Knight: It is not intended to invade state authority in the least, but to make clear that the municipality has the right to enact such local police, sanitary and other similar regulations as are not in conflict with general laws. It can not take away, however. For instance, take the quarantine laws. A city can not make them less strict than the state, but it can make them more strict.³²

Mr. Knight's remarks were intended to assuage the convention committee members who believed that the proposal would create absolute "independent sovereignty" of the municipalities (as some on the committee wished).³³ Even among skeptics, the convenors unequivocally understood that they were undertaking a complete "reversal" of the law of the time on municipal governance.³⁴

³⁰ Appellant's Merit Brief at 41. Also, Mr. Knight's comment that "municipalities could be forbidden to legislate on a particular phase of police regulation" does not conflict with the current understanding of home rule under *Canton*.

³¹ *Proceedings* at 1433 (Mr. King).

³² *Proceedings* at 1439; *See also, Proceedings* at 1463 ("Mr. KING: Would they have the right to repeal the state law on the same subject having general operation throughout the state affecting all municipalities?").

³³ *Proceedings* at 1457.

³⁴ *Proceedings* at 1439

The State also makes much of the convention’s removal of the clause, “affecting the welfare of the state as a whole.” Appellant’s Merit Brief at 24-26. Just as the jurisprudence of this Court has recognized time and time again, the convenors understood that the term “general laws” carries more than the State claims. The delegate who introduced the amendment explained: “What is the theory of passing a general law *excepting that it is a law that affects the general welfare of the state?* Can there be any other reason for the passage of a general law?”³⁵ Prong three of the *Canton* test is embedded in the phrase. “This says that the municipality can do a thing until or unless it thereby undertakes to weaken some exercise of a power established by a law made by a general lawmaking power of the State *applicable to the people* of the entire state.”³⁶ The State also conveniently elided the fact that the final clause struck from the original proposal which could have provided authority for precisely what the State did in this instance, “no such regulations shall by reason of requirements therein...be deemed in conflict therewith unless the general assembly, by general law, affecting the welfare of the state as a whole, *shall specifically deny all municipalities the right to act thereon.*”³⁷ The delegates’ commentary demonstrates that the phrase general law held meaning beyond the bare dictionary terms—just as this Court has understood it when it created the *Canton* test and subsequent case law.

The State’s reliance on a pre-1912 decision on home rule is also puzzling. The Convention radically transformed where the law stood on local governance and thus any cases pertaining to these issues must be viewed through this lens. Distrust and frustration with state interference was not limited to the Ohio legislature. The convention included changes addressing court interference

³⁵ *Proceedings* at 1472-3 (Emphasis added. Mr. Doty, April 30, 1912); *See also, Id.* at 1439 (Mr. Pettit, April 29, 1912, “I think any general law passed would affect the state as a whole.”).

³⁶ *Proceedings* at 1441-1442 (Emphasis added. Mr. Knight, April 29, 1912).

³⁷ *Proceedings* at 1313 (Mr. Knight, April 18, 1912).

upon local control overturning a decision from this Court perceived as improperly interfering with municipal self-governance.

Finally, Mr. Knight’s understanding of the Home Rule Amendment’s “widespread, complete” purpose fits squarely with the present case.³⁸ The Home Rule Amendment provides municipalities with the authority to strengthen state laws. It “give[s] the municipality *unquestioned right* for local purposes to go further than the general assembly is willing to use its powers.” (Emphasis added.)³⁹ The municipalities’ ordinances banning flavored tobacco shore up the protections for tobacco usage and sale to protect Ohio’s children, precisely in the manner that Mr. Knight had proposed.

“In interpreting constitutional text—especially a provision like Article XVIII, Section 3, which was voted on directly by the people in a September 3, 1912 special election—we look to how a voter at the time would have viewed the specific language.” *Dayton v. State*, 2017-Ohio-6909, ¶89 (DeWine, J., dissenting). Looking to the text of the Amendment, the historical events surrounding the Constitutional Convention, and the words spoken by the delegates of the Convention, they demonstrate a resounding intent to imbue Ohio with the strongest possible municipal self-governance free from corporate interference and free from central state meddling. As one delegate presciently stated, “I want the time to come when the people of Cleveland and of Columbus and of Cincinnati, who know their own problems, can work them out themselves. I do not want their big businesses to be able to send lobbyists down here and work something through the legislature and tie their hands....” (Mr. Hursh, April 30, 1912, Morning Session).⁴⁰ Despite the

³⁸ *Proceedings* at 1439.

³⁹ *Proceedings* at 1440 (Mr. Knight, April 29, 1912).

⁴⁰ *Proceedings* at 1471.

State's attempts to obfuscate the spirit and fundamental purpose of home rule, the municipalities of today understand, as did the delegates of the Constitutional Convention, that home rule is essential to protect the people of Ohio.

III. SMALL GOVERNMENT AND LOCAL CONTROL DEFINE OHIO

Although over a century has passed since home rule was adopted, home rule still defines Ohio. To now adopt an interpretation of the Ohio Constitution that grants the state legislature authority to decide what home rule means would fundamentally and unconstitutionally alter the balance of powers between the State and local governments. This balance, and the small government principles that serve as its foundation, are uniquely Ohioan. Just as the residents of Butler County would not appreciate the City of Cincinnati making laws that affect their local interests, so too do residents of the City of Columbus not want state lawmakers who live and work outside the city saying that they are no longer authorized to enact local tobacco laws that protect local children.

Ohio has long been a national leader in establishing and maintaining home rule authority for local governments. *Canton v. State* set forth a framework by which the State and local governments could fairly interpret and act based upon mutual understanding of the scope of home rule authority. In some cases, there may be disagreement. But in no case should this Court be tasked with resolving every political dispute between local and state leaders. This framework and approach should not change.

Local control is a foundational principle in Ohio, particularly in education and municipal governance, enabling locally elected boards and officials to tailor policies to community needs rather than relying solely on state mandates. It fosters accountability, allows for tailored curriculum and safety regulations, and empowers citizens to influence local decisions. Regardless of political

party or policy preference, the state legislature should not have the ability to overrule a local law or policy decision, absent some clear adherence to a commonly-understood framework that sets out a way to understand and apply the delicate balance of power intended by the Ohio Constitution.

IV. CONFLICT BETWEEN MUNICIPALITIES AND THE STATE DOES NOT REQUIRE ELIMINATION OF HOME RULE

Conflict is part and parcel of *imperium in imperio*.⁴¹ *City of St. Louis v. Western Union Telegraph Co*, 149 U.S. 465, 468 (1893). This principle of home rule—government within government—necessarily means there will be conflicts between municipal and state law. Disagreement is expected by the courts. However, discord does not mean that harmony is impossible, or that the home rule principle should, in all but name, be eliminated. As demonstrated in this case, the municipalities and the state prioritize the safety, health, and welfare of Ohio youth and their access to flavored tobacco differently. Home rule was intended to provide a framework for municipalities to address the problems unique to its boundaries and to support those localities with the capacity to address issues that drain municipal resources.

The Court has a duty to preserve the Home Rule Amendment and leave it to the citizens of Ohio to exercise their constitutional right to amend home rule. The Court must reject the State's attempt to bypass use of the legislative framework and respect a bedrock principle and the tradition of local self-governance that is a hallmark of Ohio. There must be meaningful boundaries that allow for concurrent state and local legislation on health and welfare issues. Where the state has reasonably articulated a substantial governmental interest or harm at stake, it can still narrowly tailor state law to support its goals without eliminating municipalities' right of local autonomy on

⁴¹ Lynn A. Baker & Daniel B. Rodriguez, *Constitutional Home Rule and Judicial Scrutiny*, 85 *Denv. L. Rev.* 1337, 1342 (2009).

issues of local health and welfare. The Court can, and should, continue to preserve the vital governing principle of Ohio that allows municipalities to protect the safety and welfare of its residents and provides the state authority to exercise its general police powers to legislate the conduct of Ohio residents generally.

Rather than affirmatively legislate, the state legislature is using this matter as a proxy to eradicate home rule authority in all but name. If the state wants to address the targeting of Ohio youth by the tobacco industry, it already has legislative power to affirmatively enact substantive and specific laws to regulate the conduct of Ohio residents statewide. It does not need to jettison a bedrock constitutional principle to do so. Instead, the state seeks to wipe out Home Rule and bludgeon municipalities into compliance with its decision to ignore the ongoing cycle of debilitating addiction to flavored tobacco products by Ohio youth.

Here, municipalities that are large and small, urban and rural, used their constitutional powers to regulate for the safety and welfare of local youth by banning access to flavored tobacco. In contrast, the state legislature states that it “appreciate[s] that some tobacco products are flavored” but has chosen not to forbid this type of tobacco, specifically designed to ensnare vulnerable youth. Appellant’s Merit Brief at 3-4. As the Tenth District Court of Appeals stated, “[t]he Home Rule Amendment ‘does not subtract a particle from the police power of the state, but does give the municipality unquestioned right for local purposes to go further than the general assembly is willing to use its powers.’” (Cleaned up.) App.Op., ¶ 28. Instead of working within the constitutional framework that allows for local solutions tailored for the health, welfare, and safety of localities, the State is using this matter to undercut the Home Rule Amendment. Its interpretation of the Amendment would give the state legislature what is tantamount to complete preemptive rule over municipalities by eviscerating any meaningful right to local self-governance.

We ask this Court to block the state legislature's unlawful restriction of local governance and preserve the municipalities' power to protect and prioritize their communities.

CONCLUSION

For the reasons stated above, *amici* urge the Court to affirm the ruling of the Tenth District Court of Appeals and uphold the constitutional principle of home rule.

Respectfully submitted,

/s/ Sarah Biehl

Counsel for Amici Curiae

Elaine Poon (Virginia 91963)*
Selin Cherian-Rivers (D.C. 458487)*
PUBLIC RIGHTS PROJECT
490 43rd Street, Unit #115
Oakland, CA 94609
(510) 738-6788
elaine.poon@publicrightsproject.org
selin.cherian-rivers@publicrightsproject.org

Sarah Biehl (0083423)
Policy Director
Ohio Mayors Alliance
10 W. Broad St., Suite 1520
Columbus, Ohio 43215
(773)517-1154
sarah@ohiomayorsalliance.org

Counsels for Amici Curiae Ohio Mayors Alliance and Ohio Municipal Attorneys Association

**Pro Hac Vice in process*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above *Amici Curiae* brief of The Ohio Mayors Alliance and the Ohio Municipal Attorneys Association in Support of Appellees in support of the City of Columbus was served this 11th day of March 2026 via e-mail on:

Mathura J. Sridharan
Mathura.Sridharan@OhioAGO.gov

Counsel for Appellant State of Ohio

Richard N. Coglianesi
Matthew D. Sturtz
Aaron D. Epstein
rncoglianesi@columbus.gov
mdsturtz@columbus.gov
adepstein@columbus.gov

Counsel for Appellees City of Columbus, et al.

Respectfully submitted,

/s/ Sarah Biehl

Counsels for Amici Curiae