IN THE SUPREME COURT OF OHIO

CITY OF COLUMBUS, *et al.*,	)	Case No. 2025-1057
	)	
Appellees,	)	
	)	On Appeal from the Tenth
vs.	)	District Court of Appeals,
	)	Franklin County
STATE OF OHIO, *et al.*,	)	
	)	Court of Appeals
Appellants.	)	Case No. 24-AP-333

AMICI CURIAE BRIEF OF THE BUCKEYE INSTITUTE AND PROFESSOR NATHANIEL M. FOUCH IN SUPPORT OF NEITHER PARTY

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STATEMENT OF INTEREST OF AMICI CURIAE

The Buckeye Institute was founded in 1989 as an independent research and educational institution—a think tank—to formulate and promote free-market policy in the states. The Buckeye Institute accomplishes its mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating free-market policies, and marketing those policy solutions for implementation in Ohio and replication across the country. The Buckeye Institute also files lawsuits and submits amicus briefs to fulfill its mission. The Buckeye Institute is a nonpartisan, nonprofit, tax-exempt organization, as defined by I.R.C. section 501(c)(3).

This case addresses the state's ability to preempt municipalities' home rule authority. The Buckeye Institute's attorneys represent individuals who are challenging—under R.C. 9.68—some of the City of Columbus's firearms regulations. *See generally Doe v. Columbus*, No. 2024-0056. How the Court resolves the home rule question here will directly affect The Buckeye Institute's clients.

Nathaniel M. Fouch is an Assistant Professor of Law at Capital University Law School. Professor Fouch's research focuses on state constitutional law, legal history, jurisprudence, appellate law, and religious liberty and conscience rights. Professor Fouch has published numerous articles on state constitutional law, including *"A Document of Independent Force": Towards A Robust Ohio Constitutionalism*, 49 U. Dayton L. Rev. 1 (2023).

This brief traces the original public meaning of the phrase "general laws" as it would have been understood by the framers and the electorate that adopted Article XVIII, Section 3 of the Ohio Constitution in 1912.

STATEMENT OF THE FACTS

This lawsuit involves several Ohio cities that seek to impose their own local tobacco laws. But the State of Ohio has prohibited political subdivisions from having or enforcing any regulation that "conflicts with or preempts any policy of the state regarding the regulation of tobacco products or alternative nicotine products . . . ." R.C. 9.681(B). The General Assembly provided examples of prohibited actions. *Id.* at (B)(1)–(4). However, the General Assembly exempted from its blanket prohibition taxes that are "expressly authorized by state law . . . ." *Id.* at (E).

In R.C. 9.681, the General Assembly declared that "[t]he regulation of tobacco products and alternative nicotine products is a matter of general statewide concern that requires statewide regulation." *Id.* at (B). It noted that the state "has adopted a comprehensive plan with respect to all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products." *Id.* The General Assembly found and declared that R.C. 9.681 "is part of" the state's "statewide and comprehensive legislative enactment[s]" regulating tobacco products and alternative nicotine products. *Id.* at (D). It also found and declared that regulation of this subject by any political subdivision is a matter of statewide concern, as it would be inconsistent with the "statewide, comprehensive enactment." *Id.* "By the enactment of this section, it is the intent of the general assembly to preempt political subdivisions from the regulation of tobacco products and alternative nicotine products." *Id.*

ARGUMENT AND LAW

I. The text and history of Article XVIII, Section 3, and the structure of the Ohio Constitution limit the police powers of Ohio municipalities.

Ohio's Home Rule Amendment, adopted in 1912, constitutionalized the methods for creating local governments in Ohio, *see* Ohio Const., art. XVIII, §§ 2, 7, and granted municipalities the 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. "All agree that article XVIII was adopted for the purpose of changing" the condition that cities could exercise "only such powers as were granted to them by statute." *Fitzgerald v. City of Cleveland*, 88 Ohio St. 338, 360 (1913). Nonetheless, the Court's precedent has expanded the purpose of Article XVIII, Section 3 and limited its text.

Interpreting an unambiguous, voter-approved constitutional amendment should begin, and often end, with the amendment's text. *See* R. Patrick DeWine, *Ohio Constitutional Interpretation*, 86 Ohio State L.J. (forthcoming 2025) (manuscript at 19), https://ssrn.com/abstract=4986929. Even though "[i]n all the history of the state[,] laws have been passed applying to all municipalities and they have been construed as general laws," 2 *Proceedings and Debates of the Constitutional Convention of the State of Ohio*, 1474 (1913) ("*Proceedings and Debates*") (statement by home rule proponent Delegate Crosser), debate remains over the meaning of "general laws" in Article XVIII, Section 3. This Court has noted that "where the text is unclear, it is appropriate to consider 'the history of the amendment and the

circumstances surrounding its adoption, the reason and necessity of the amendment, the goal the amendment seeks to achieve, and the remedy it seeks to provide to assist the court in its analysis.'" DeWine at 19, quoting *City of Centerville v. Knab*, 2020-Ohio-5219, ¶ 22. "Reading the text 'in light of' our history and traditions is a means of elucidating the text without attempting a wholly intent-based analysis unmoored from the words themselves." Nathaniel Fouch, *"A Document of Independent Force": Towards A Robust Ohio Constitutionalism*, 49 U. Dayton L. Rev. 1, 34 (2023).

Looking "first to the text" of the Ohio Constitution, "as understood in light of our history and traditions," *State v. Smith*, 2020-Ohio-4441, ¶ 29, we see that the meaning of "general laws" at the time the Home Rule Amendment was framed and ratified was consistent with prior interpretations of the same phrase. That is, a

> "law framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is . . . a general law."

Cincinnati St. Ry. Co. v. Horstman, 72 Ohio St. 93, 109 (1905), quoting *State ex rel. Van Riper v. Parsons*, 40 N.J.L. 123 (1878), paragraph one of the syllabus. The text, structure, and historical record, make evident that the Home Rule Amendment assumes that local functions "not specifically denied" can be exercised by the municipality, 2 *Proceedings and Debates* at 1458 (G.W. Harris, chair of the Committee on Municipal Government), but the state remains "supreme in matters that are of a

general concern," Herbert S. Bigelow, *A New Constitution for Ohio*, 11 (1912) (president of the constitutional convention).

A. A plain reading of the phrase "general law" means a law that is universal rather than local.

At the time of the 1912 constitutional debates, an ordinary dictionary definition of "general" meant "[c]ompletely or approximately universal, including or affecting all or nearly all parts, not partial, particular, local, or sectional." *Dayton v. State*, 2017-Ohio-6909, ¶ 90 (DeWine, J., dissenting), quoting *The Concise Oxford Dictionary of Current English* (1912). Thus, the "ordinary meaning of a 'general law' [ ] would be a law that is universal, not local." *Id.* (DeWine, J., dissenting). However, "the term 'general law' is by its very nature a technical legal term . . . ." *Id.* at ¶ 91 (DeWine, J., dissenting).

When one looks at the legal understanding of the term "general laws" leading up to the 1912 debates, it becomes apparent that the legal, technical definition matches the ordinary English definition. Ohio voters, when voting on the Amendment, would likely have been familiar with the phrase "general laws" because the 1851 Ohio Constitution used that term, and the Court had repeatedly interpreted it.

B. The history of Ohio's Constitution before 1912 confirms that the phrase "general laws" was well-understood—both to lawyers and the public at large—as meaning a law of statewide effect.

During the 1912 constitutional convention, Humphrey Jones, a lawyer and delegate from Fayette County, declared during a discussion about what would become the Home Rule Amendment that "[t]he term 'general law' is one that has been the subject of interpretation for many years. Courts have thoroughly well settled the

construction of that term and we need have no doubt about what the future rule will be." 2 *Proceedings and Debates* at 1471–1472. While Delegate Jones was optimistic about courts' ability to hew to the historical understanding of the term, he was right that such an understanding existed, and it is easily verifiable. After all, since 1851, Ohio courts had been interpreting not one, but five different constitutional provisions that expressly dealt with "general" laws. The debates surrounding the adoption of these provisions and subsequent caselaw interpreting them make clear that "general laws," as used in Article XVIII, Section 3, refers to laws neither special nor designed for peculiar localities or sections, but laws that operate equally and uniformly across the state.

This Court has historically defined the same term occurring throughout the Constitution to mean the same thing. *See, e.g.*, *Lamb v. Lane*, 4 Ohio St. 167, 177 (1854) (interpreting "jury" as used in a property valuation context in Article I, Section 19 of the Ohio Constitution to mean the same thing as "jury" used in a criminal context in Article I, Section 7); *see also* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts*, 170 (2012) (citing the "Presumption of Consistent Usage" to stand for the principle that "A word or phrase is presumed to bear the same meaning throughout a text"). Indeed, this Court has declared firmly that it is the Court's "duty to give a construction to the constitution as will make it consistent with itself, and will harmonize and give effect to all its various provisions." *Hill v. Higdon*, 5 Ohio St. 243, 247 (1855).

Additionally, this Court has declared that when a word or phrase is used in a constitutional amendment adopted by the electors of the state, it is done "with the knowledge of the construction given it by this court," such that the Court presumes "that the same construction would obtain; otherwise the language would have been changed to indicate a different intent and purpose." *State ex rel. D'Alton v. Ritchie*, 97 Ohio St. 41, 46–47 (1917); *see also Wolf v. State*, 19 Ohio St. 248, 255 (1869) ("[I]t is but reasonable to presume that the framers of the present Constitution understood and used [the term 'indictment'] in the sense that had been thus given to it in the instrument from which it was substantially copied."); Scalia & Garner at 322 (citing to the "Prior-Construction Canon," under which "words or phrases that have already received authoritative construction by the jurisdiction's court of last resort . . . are to be understood according to that construction"). Indeed, in giving consistent construction to the Ohio Constitution, this Court has "suppose[d] that the [constitutional] convention used language with reference to its popular and received signification; and applied it as it had been practically applied for a long series of years." *Hill* at 247–248.

"General" as a qualifier for laws appears in several places in the Ohio Constitution as it stood at the time of the 1912 convention. *See* Ohio Const., art. II, §§ 26, 29; art. XII, § 2; art. XIII, §§ 2, 6. These provisions were repeatedly interpreted in the six-plus decades between the 1851 and 1912 constitutional conventions. The delegates' choice to use a phrase with a well-established legal meaning, and the electorate's acceptance of the same phrase, are important indicators of meaning. The

term was used in different contexts and to remedy different evils, but a brief examination of "our history and traditions" illuminates the text and clarifies the meaning the phrase had to the framers who drafted and the electors who adopted the amendment that would become Article XVIII, Section 3.

"[O]ne of the most prominent of the purposes leading to the adoption of the [1851] constitution was to relieve the people of the evils of special legislation." *State ex rel. Knisely v. Jones*, 66 Ohio St. 453, 489 (1902). This proposition is confirmed by the convention debates themselves. One lawyer-delegate, Elijah Woodbury, complained that "[n]ot one fourth the number of laws passed [by the General Assembly] are general laws, but are local laws designed for peculiar localities and sections, carving out of the right of individuals special privileges for a few." 1 *Report of the debates and proceedings of the Convention for the revision of the constitution of the state of Ohio, 1850-51*, 212 (1851); *see also id.* at 285 (similar statement of lawyer-delegate James W. Taylor).

Accordingly, the 1851 constitution cabined the legislature's otherwise boundless authority: "All laws, *of a general nature*, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution." (Emphasis added.) Ohio Const., art. II, § 26. *See also Gentsch v. State*, 71 Ohio St. 151, 164 (1904) (equating "laws of a general nature" with general laws). This Court recognized early on that this 1851 constitutional provision "had the effect to abolish" local laws, which were "laws of a

general nature, whose operation was confined to particular localities." *Cass v. Dillon*, 2 Ohio St. 607, 616–617 (1853). "The evident intention [of the 1851 provision] was to restrict local and special legislation to such subjects as are, in their nature, not general, so as to compel, as near as possible, uniformity of laws throughout the state." *Hixson v. Burson*, 54 Ohio St. 470, 482 (1896). To be clear, this section "does not forbid local legislation" nor "require that all enactments of the legislature shall be of a general nature" but merely requires that "laws of a *general nature* shall have a uniform operation throughout the state." *State ex rel. Atty. Gen. v. Covington*, 29 Ohio St. 102, 111 (1876).

Early on, this Court recognized that "the character of a law as general or local depends on the character of its subject-matter." *Kelley v. State*, 6 Ohio St. 269, 272 (1856). "If that be of a general nature, existing throughout the state, in every county, a subject-matter in which all the citizens have a common interest . . . then the laws which relate to and regulate it are laws of a general nature." *Id.* This Court would confirm this understanding "[b]y a long line of decisions" stretching until shortly before the 1912 constitutional convention. *State ex rel. Wirsch v. Spellmire*, 67 Ohio St. 77, 80 (1902). It reasoned that "every subject of legislation is either of a general nature, on the one hand, or local or special, on the other. It cannot be in its nature both general and special, because the two are inconsistent." *Hixson* at 481. By this rule, the Court declared that "every subject-matter which can reasonably be covered and provided for by a general law can have no special or local legislation as to it, or any of its parts." *Wirsch* at 83. Meaning that it must apply the same to all localities.

By other provisions, the 1851 convention flipped the General Assembly's preference for special and local laws over general laws. The changes shaped the constitutional preference for general laws, specifically permitting the General Assembly to pass, "by general laws," legislation that it would otherwise be prevented from passing. In forbidding retroactive laws, the 1851 Constitution provided that the legislature "may, *by general laws*, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties and officers by curing omissions, defects and errors in instruments and proceedings arising out of their want of conformity with the laws of this state." (Emphasis added.) Ohio Const., art. II, § 28. Under the Ohio Constitution of 1802, the General Assembly had "virtually unqualified power to tax." Steven Steinglass & Gino Scarselli, *The Ohio State Constitution*, 471 (2d Ed. 2022). Indeed, the only limitation on its taxing power was a prohibition on poll taxes. *See* Former Ohio Const., art. VIII, § 23 (1802). This changed with the adoption of the 1851 Constitution, which required all taxes to be made "by a uniform rule." Ohio Const., art. XII, § 2. The new provision enumerated six types of property that could, "by general laws, be exempted from taxation." *Id.*

Article XIII of the Ohio Constitution deals with the formation of corporations—public and private—and was adopted in 1851 "in response to the abuses involved in the incorporation of private and municipal corporations under the 1802 Constitution." Steinglass & Scarselli at 487. Article XIII provides that "[t]he General Assembly shall pass no special act conferring corporate powers." Ohio Const., art. XIII, § 1. The next section provides that "[c]orporations may be formed under general laws; but all such

laws may, from time to time, be altered or repealed." Ohio Const., art. XIII, § 2. Later, Article XIII states that "[t]he General Assembly shall provide for the organization of cities, and incorporated villages, by general laws; and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power." Ohio Const., art. XIII, § 6.

Article XIII, Section 6 "assumes the imperative form of expression, and declares that 'the general assembly *shall* provide for the organization of cities and incorporated villages by *general* laws.'" (Emphasis in original.) *State ex rel. Atty. Gen. v. City of Cincinnati*, 20 Ohio St. 18, 35 (1870). "By this provision it will be seen that municipal corporations have not plenary power to levy taxes, but are subject in that behalf entirely to the will of the General Assembly of Ohio as expressed in the statutory laws of this state." *State Bd. of Health v. City of Greenville*, 86 Ohio St. 1, 31 (1912). In contrast, Article XIII, Section 1 is "all-comprehensive" in its declaration that "'[t]he general assembly shall pass *no* special act conferring corporate powers.'" (Emphasis in original.) *State ex rel. Atty. Gen. v. City of Cincinnati* at 35, quoting Ohio Const. art. XIII, § 1. This Court recognized that

> [t]hese provisions of the constitution are as imperative, as comprehensive and emphatic, as if the people, speaking through their constitution, had said: "this bane and curse of our legislation as it existed under . . . the constitution of 1802, is, in future, utterly and

> absolutely prohibited. Henceforth the laws conferring corporate powers shall be *general* . . . ."

Id.

Writing a mere twenty years after the convention, Chief Justice Brinkerhoff stated that

> [n]o one who has read the proceedings and debates of the convention which presented to the people of Ohio the framework of the constitution which the latter by their votes established and adopted, or is old enough to remember the apprehensions of evil consequences with which the conferring of corporate powers by special acts were regarded, can fail to see that it was one of the ends and aims of the constitutional convention, and of the people who adopted the framework of a constitution which that convention presented for their adoption or rejection, to cut up by the roots, at once and forever, all capacity of the general assembly to confer by special act any powers whatsoever upon any corporate body whatsoever.

Id.

Before the 1912 convention, this Court read all of these provisions together, *in pari materia*, in conjunction with the Constitution's grant of legislative power to demonstrate the understanding of general laws that prevailed at the time of the 1912 convention. The General Assembly has "full power . . . to pass local and special laws, . . . unless limited by some other part of the constitution." *Hixson*, 54 Ohio St.

at 479. The Ohio Constitution explicitly limits the power to legislate by local or special laws as to correcting errors, omissions, and defects in instruments and proceedings, Ohio Const., art. II, § 28, the power to pass special laws as to the taxation of property, Ohio Const., art. XII, § 2, the power to pass special laws conferring corporate power, Ohio Const., art. XIII, § 1, the power to form corporations by local or special laws, Ohio Const. art. XIII, § 2, and the power to organize cities and villages by local or special laws, Ohio Const., art. XIII, § 6. *Hixson* at 479–480. "The legislation as to these named subjects is required to be by general laws," which must then "have a uniform operation throughout the state." *Id.* at 480, quoting Ohio Const., art. II, § 26. Finally, in 1905—seven years before the 1912 convention—this Court defined a general law as a "'law framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves . . . .'" *Cincinnati St. Ry. Co,* 72 Ohio St. at 109, quoting *State ex rel. Van Riper,* 40 N.J.L. at paragraph one of the syllabus; *see also Platt v. Craig*, 66 Ohio St. 75, 79 (1902) ("A general law must therefore, in its operation, be coextensive with the state, and coextensive with every class brought within the purview of the statute"). Such a definition is what Delegate Jones, his fellow delegates, and the voting public would have likely understood Article XVIII, Section 3 to refer to at the time of its adoption in 1912. Such is how this Court should likewise construe the term.

C. The evolution of the Home Rule Amendment's text throughout the 1912 convention indicates that the Amendment was intended to grant municipalities general police powers, subject always to the General Assembly's override.

Although unambiguous text must control the construction of a constitutional provision, the history and debates over a particular phrase may "fortify us *in following the natural import of its language*, and legitimately aid in removing our doubts." (Emphasis added.) *Cass*, 2 Ohio St. at 621. This Court has noted that debates "are not without importance where they tend to support a construction indicated by the language of an amendment; and they may show what was the mischief which was intended to be prevented under the new order by the adoption of the amendment." *Steele, Hopkins & Meredith Co. v. Miller*, 92 Ohio St. 115, 122 (1915).

The 1912 debates that developed the text of the Home Rule Amendment are particularly useful for determining what an informed voter would have understood the Home Rule Amendment to mean. When the 1912 convention opened in early January of that year, rural areas made up the most delegates with fifty-nine, followed by thirty-two from towns, and twenty-eight from urban areas. Barbara A. Terzian, *Ohio's Constitutions: An Historical Perspective*, 51 Clev. St. L. Rev. 357, 384 (2004). "It was estimated that only twenty-five percent of the one hundred and nineteen members elected were conservatives, nearly all from the rural districts." Landon Warner, *Ohio's Constitutional Convention of 1912*, 61 Ohio St. Archaeological & Hist. Q. 11, 17 (1952). This makeup of the delegates was unsurprising:

> The progressive movement was at high tide during these years. The people were increasingly aware of the changing demands of society. They

> believed that the Constitution which had been adopted for conditions existing in 1851 had outlived its usefulness.

6 Carl Wittke, *The History of the State of Ohio*, 13 (1942).

The 1912 convention provided a healthy mix of lawyers and laymen. Although there were forty-six lawyers, only seven of them played a significant role. Warner at 17–18. There were twenty-five farmers, fourteen bankers and businessmen, ten delegates "drawn from the ranks of labor, four of whom were prominent throughout the proceedings," six educators, two editors, four ministers, four physicians, and the remaining from miscellaneous occupations. *Id.*

Unlike the prior constitutional convention, the debates did not stay within the convention room:

> Both the county weeklies and metropolitan dailies of Ohio extensively reported the debates; Saturday night meetings became popular in some of the towns, people of all classes gathering to discuss the issues argued before the convention during the preceding week. Whatever else it accomplished, the constitutional assembly was of great educational value. Not only in the newspapers at home but in the national weeklies and scholarly journals the work of the convention was reported with absorbing interest. Special articles were penned by four delegates.

Id. at 19–20. Further, "[t]he convention approved the distribution to every voter of the state of a pamphlet listing the short title and full text of each amendment, followed by a brief explanation of its purport." *Id.* at 27.

1. The major home rule proposals submitted to the convention committee on municipal government envisioned state control through general laws.

Six home rule proposals were introduced and referred to the convention's committee on municipal government. *See Proposals to amend the constitution, no. 1-340*, available at https://tinyurl.com/ynhr4dyj (accessed Feb. 23, 2026) ("*Proposed Amendments*") (proposals 9, 84, 128, 138, 272, and 279). The proposals varied not only in the scope of municipal power but also in the scope of state control. Allen Sage Wilber, *A History of Municipal Home Rule in the State of Ohio*, 69 (1914) (M.A. thesis, University of Illinois). Two of the proposals included the most comprehensive provisions for home rule, and a convention of Ohio municipalities had devised both. *Id.* at 70. Proposal 272, the Cleveland plan, was the plan agreed to by the majority of the Ohio Municipal League. Proposal 279, the Cincinnati plan, was adopted by a minority of the Ohio Municipal League but maintained a similar approach as Proposal 272. The committee on municipal government used Proposal 272 as its starting point.

Section 2 of Proposal 272 required the General Assembly to "provide for the incorporation and government of cities and villages by general laws," but allowed it to pass "special acts pertaining to or changing the organization or powers of any municipal corporation." *Proposed Amendments* at 611. Alternatively, sections 3 and 7 allowed a municipality to "adopt a charter for its own government" and to "exercise thereunder all powers of local self-government." *Id.* at 612–614. Those powers of local self-government, however, were "subject to the general laws of the state, except in municipal affairs." *Id.* at 612. Proposal 272 allowed municipalities to regulate public

schools and libraries; however, that power was also subject to the General Assembly's "general laws" related to "fix[ing] and maintain[ing] the standard of education for the state and to establish[ing] a minimum rate of taxation for school purposes." *Id.* Finally, it granted municipalities the "power to enact and enforce within their limits such police, sanitary and other regulations as are not in conflict with general laws . . . ." *Id.* at 612–613. This last provision went on to contemplate specific preemption: "[N]o such regulation shall be reason of requirements therein, in addition to those fixed by any law, be deemed in conflict therewithin unless the General Assembly, by general law, *shall have specifically denied municipalities the right to act thereon*." (Emphasis added.) *Id.* at 613.

The standing committee on municipal government returned Proposal 272 to the convention with amendments. The chairman of the committee reported that the "radicals" on the committee—"who demanded that the fundamental basis of this proposal should be complete sovereignty in the municipality, independent of the state"—"made very important concessions." 2 *Proceedings and Debates* at 1456. And once returned, the proposal retained several references to special and general laws. *See id.* at 1313. It also maintained several ways for a municipality to form its government. *See id.* (sections 2, 7, and 8).

As to the powers of the municipalities, the amended proposal provided:

> SECTION 3. Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws, affecting the welfare

> of the state, as a whole, and no such regulations shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict therewith unless the general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon.

Id.[1] Section 3 of the amended proposal contained three distinct features. First, it granted municipalities the power to enact and enforce within their limits such local police, sanitary, and other similar regulations. Next, it limited this power by preempting local regulations that conflicted with general laws, "affecting the welfare of the state as a whole." But, if the local law added to state regulations "fixed by law," it could only be deemed in conflict with state law if the General Assembly, "by general law, affecting the welfare of the state as a whole," specifically denied "all municipalities the right to act thereon." *Id.* The purpose, meaning, and usefulness of these requirements sparked significant debate, eventually leading to the much simpler formulation: "Municipalities shall have authority to exercise all powers of local self-government, and to enact 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.

[1] Section 7 also provided, "Any city or village may frame, adopt or amend a charter for its government, and may exercise thereunder all powers of local self-government; but all such charters and powers shall be subject to general laws affecting the welfare of the state, as a whole." *Id.*

2. The debates over Proposal 272 illuminate the delegates' intent and the meaning of home rule authority.

During the debates, Ohio State University history professor and Franklin County delegate Dr. George Knight, representing the committee on municipal government, walked the delegates through the amended Proposal 272, answering their questions as he went. Before discussing municipal police powers, Professor Knight explained how section 2 of Proposal 272—titled general and special laws—organized cities. Section 2 required the General Assembly "by *general laws*, [to] provide for the incorporation and government of cities and villages," and it allowed the General Assembly to "enact *special laws* for the government of municipalities adopting the same . . . ." (Emphasis added.) 2 *Proceedings and Debates* at 1313. Professor Knight explained that the special laws provision, as distinct from general laws, embraced the idea "that the legislature should have the right to pass laws for fewer than all [municipal] corporations" because "[i]t is often desirable that the lawmaking power of the state should have the right to enact a law for one municipality alone." *Id.* at 1437.

Next, Professor Knight moved on to the municipal powers. He explained that the main thing that the amended proposal undertook to do with municipal powers was to get away from the rule that

> municipal corporations, like all other corporations, shall be held strictly within the limit of the powers granted by the legislature to the corporation, and that no corporation, municipal or otherwise, may

> lawfully undertake to do anything which it has not been given specifically the power to do by the constitution or the lawmaking body.

Id. at 1433. Professor Knight explained that the proposal undertook

> pretty nearly to reverse that rule and to provide that municipalities shall have the power to do those things *which are not prohibited*, that is, those things with reference to local government, with reference to the affairs which concern the municipality, which are not forbidden by the lawmaking power of the state, or are not in conflict with the general laws of the state under the police power and the general state regulation. So the presumption would now become a presumption in favor of the lawfulness of the municipalities' act, and that presumption would only be overcome by showing that the power had been denied to the municipalities or that it was against the general laws of the state.

(Emphasis added.) *Id.*

Most delegates who spoke during the debates agreed that this was the purpose of the Home Rule Amendment. *See, e.g., id.* at 1439 (discussion between Professor Knight and Delegate Hoskins on the purpose of section 3); *see also id.* at 1463–64 (noting that the thing advocates of home rule "most complain of is that the city as such has no right to make any laws or exercise any power unless the legislature clearly gives them that right. They want clearly to reverse the proposal, and they want the right to make all laws and to do all things that the municipality wants to

do under the police regulations, *save only as the legislature has prohibited*." (Emphasis added.)).

In discussing Proposal 272, several delegates questioned why the committee had added the qualifier "affecting the welfare of the state, as a whole," to the term "general laws." *See, e.g., id.* at 1439. Members of the committee responded that the committee believed this was necessary because laws that acted like special legislation by affecting only certain portions of the state could nonetheless be upheld as general laws. *See, e.g., id.* at 1442. Several delegates objected to this contention because, under prior interpretations and the general understanding of the term, all general laws must have statewide effect. *See, e.g., id.*; *see also* Section I, B, above. These delegates did not see the need for the additional language. *See, e.g.,* 2 *Proceedings and Debates* at 1439–1442.

Several delegates also raised concerns that granting police powers under section 3 would weaken the state's powers. Professor Knight responded: "You do not lessen the power. It can not destroy or weaken any statute enacted by the general assembly of uniform application." *Id.* at 1440. That is because under the proposal, any law that weakened the general laws of the state conflicted with those laws. Any law that added regulation to the general laws also conflicted with the general laws, but only if the General Assembly, through a general law, expressly prohibited such addition. *See, e.g., id.* at 1441. Delegate Starbuck Smith—"one of the most radical homerulers," *id.* at 1457—explained that Proposal 272 required the General Assembly to specifically deny to municipalities the ability to regulate on certain matters, so long as the

General Assembly's law affected all municipalities, *id.* at 1646. *See also id.* at 1465–66 (opposing delegates, one a lawyer and one a layman, agreeing that "the moment that the municipality exercises any power which the general assembly thinks beyond the province of the municipality, the general assembly would enact a general law forbidding the municipality from exercising that particular power").

After several days of debate over Proposal 272, Delegate Edward Doty, a layman from Cuyahoga, proposed an amendment to section 3 that had been proposed and debated several times:

> Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws~~, affecting the welfare of the state, as a whole, and no such regulations shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict therewith unless the general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon.~~

See id. at 1472. Delegate Smith questioned Doty on his amendment: "Do you know that the cities can not have home rule under your amendment?" *Id.* at 1473. Doty rejected Smith's interpretation of the amendment:

> No, sir; I have been utterly unable to find anybody who can show me that they won't. . . . I do not understand why the whole of the home rule principle must stand or fall on section 3 as in the proposal book. As I understand the home rule proposal it is a proposition that allows cities

> to frame their own charters and make for themselves such laws as they deem wise, provided those laws do not conflict with the general laws of the state. In a general way that is my understanding of home rule.

Id. Doty's amendment passed 67 to 41. *Id.* at 1474.

Delegate Robert Crosser, a lawyer also from Cuyahoga, opposed the passage of Doty's amendment. Crosser supplied examples of what he believed would happen under Doty's amendment:

> What is there to stop the state of Ohio, as the proposal now stands, from passing a general law saying that every policeman employed by any municipality in the state shall get $50 a month, no more and no less? Would not that be a general law? Certainly it would be so construed. Suppose the state should go farther and say, there is a civil service regulation which shall affect every public officer in the state of Ohio and the employment of every public officer in the state of Ohio, would not that be a general law? Couldn't they pass such a law? I cannot see it otherwise.

Id. at 1485.

To resolve Smith and Crosser's complaints about Doty's amendment, Professor Knight offered an amendment of his own:

> Municipalities shall have ~~power~~ authority to exercise all powers of local self-government, and to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

See id. Professor Knight felt that "this goes far enough to give us in the cities of this state an adequate measure of municipal home rule . . . ." *Id.* Professor Knight's amendment was agreed to. *See id.* at 1489. With Professor Knight's amendment, Proposal 272 was passed 104 to 6 and submitted to the people of Ohio. *See id.* at 1496.

II. *Canton's* limitation of "general laws" ignores how that phrase was understood at the time of the ratification of the Home Rule Amendment.

In *Canton*, the Court consolidated scattered pronouncements of the meaning of "general laws" in Article XVIII, Section 3 into a single test that would govern the home rule analysis. Under the *Canton* test, to qualify as a general law, a statute must

> (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

Canton v. State, 2002-Ohio-2005, syllabus. However, the *Canton* test goes two steps too far.

As explained above, the text and history of the Home Rule Amendment make clear that a general law is one that is part of a statewide legislative enactment that applies to all falling under the purview of the statute, in all parts of the state alike. The text and history of the Home Rule Amendment do not support the conclusion that a state general law must set forth police, sanitary, or similar regulations, rather than purport only to grant or limit the legislative power of a municipal body, or that a state general law must prescribe a rule of conduct for citizens generally.[2]

The text of Article XVIII, Section 3 grants municipalities the authority to pass police, sanitary, or similar regulations that do not conflict with general laws of the state. The text *does not* say municipalities may "adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general [police, sanitary and other similar] laws." That is because, unlike municipalities, the state's powers are not limited to enacting police, sanitary, and other similar laws. *See Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 2010-Ohio-6207, ¶¶ 10–11 ("The General Assembly has plenary power to enact legislation; it is limited only by the Ohio Constitution and the Constitution of the United States."). The constitutional debates over municipal police powers raised

[2] Practically, prongs three and four require the same thing. *See Village of W. Jefferson v. Robinson*, 1 Ohio St.2d 113, 117–118 (1965) (relying on the pronouncement in *City of Youngstown v. Evans*, 121 Ohio St. 342 (1929), that a general law must "prescribe a rule of conduct upon citizens generally" to determine that the words "general laws" mean "statutes setting forth police, sanitary or other similar regulations and not statutes which purport only to grant or to limit the legislative powers of a municipal corporation"); *see also Dayton*, 2017-Ohio-6909, at ¶¶ 41–46 (French, J., concurring in judgement only) (discussing cases where the state law limited legislative powers but was found to not prescribe a rule of conduct upon citizens generally).

concerns that the amended proposal returned by the committee would transfer the state's police powers to municipalities. *See, e.g.,* 2 *Proceedings and Debates* at 1440–1441. Professor Knight explained that this was not the case. Nonetheless, as the debates progressed, the delegates spoke broadly about the state's ability to preempt municipal regulations through general laws, without any reference to the state's need to act under its police powers. *See, e.g., id.* at 1463–64.

Similarly, the text of Article XVIII, Section 3 does not refer to the conduct of citizens. And as shown by the prior interpretations of the term general laws, that phrase was not so limited. *Compare Platt*, 66 Ohio St. at 80–81 (striking down a law that was "not limited to certain municipalities, or a certain class of municipalities, but to one certain municipality" because it was not a general law) *with Gentsch*, 71 Ohio St. at 167 (upholding "regulation regarding the conduct of elections throughout the state," which closed the polls "in cities which have now or may hereafter have a population of three hundred thousand or more").

The illegitimacy of *Canton's* third and fourth prongs can be further derived from how those prongs operate with other provisions of the Ohio Constitution. First, prong three states, in part, that a state general law is not one that purports "only to grant . . . legislative power of a municipal corporation to set forth police, sanitary, or similar regulations . . . ." *Canton*, 2002-Ohio-2005, at syllabus. Whether a law grants a municipality legislative power related to those subjects is irrelevant to whether the law is a general law. The grant itself is unnecessary because Article XVIII, Section 3 already gives the municipality the 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 . . . .” Ohio Const., art. XVIII, § 3. A state law granting such legislative power does nothing, but that does not change whether the statute is a general law. Further, should a municipality wish to exercise any powers other than those of local self-government, police, sanitary, or similar, it must derive that power from the state. *See State ex rel. Ramey v. Davis*, 119 Ohio St. 596, 599–603 (1929). And, ordinarily, that grant of additional powers must come in the form of a general law. *See* Ohio Const., art. XIII, § 1; Ohio Const., art. II, § 26.

Second, prong four requires the law to “prescribe a rule of conduct upon citizens generally.” *Canton* at syllabus. Yet Article XVIII provides that “[g]eneral laws shall be passed to provide for the incorporation and government of cities and villages . . . .” Ohio Const., art. XVIII, § 2. *See also* Ohio Const., art. XIII, § 6 (“The general assembly shall provide for the organization of cities, and incorporated villages; by general laws.”). If the term general laws is to have the same meaning throughout the Ohio Constitution, *see Hill*, 5 Ohio St. at 247, it cannot be that general laws explicitly require legislation related to cities and villages in Article XVIII, Section 2, while simultaneously being “wholly separate from and without reference to any of [the state’s] political subdivisions,” *Froelich v. City of Cleveland*, 99 Ohio St. 376, 386 (1919), in Article XVIII, Section 3.

The *Canton* test went far adrift from the Home Rule Amendment’s textual moorings. Simply put, *Canton’s* third and fourth prongs are unsupported.

III. Policy arguments about the pros and cons of municipal home rule do not change the meaning of the Ohio Constitution.

The only question before the Court is what limits Article XVIII, Section 3 places on the state and municipalities. The benefits and drawbacks of municipal home rule are not questions involved in this case, and they do not change the meaning of what the people of Ohio voted for. "The arguments in favor of or against [municipal home rule] were proper considerations for the constitutional convention and for the electors of the state . . . ." *Fitzgerald*, 88 Ohio St. at 391–92 (1913) (Donahue, J., dissenting). But now that Article XVIII, Section 3 has been adopted, the "sole and only duty of the court is to interpret it as it is written, and not as the court thinks it should have been written." *Id.* (Donahue, J., dissenting).

Ohio municipalities often argue that an interpretation of "general laws" that differs from the *Canton* test will destroy municipal home rule. *See, e.g.,* Mem. in Opp'n to Jurisdiction of the Pls./Appellees at 9 ("[T]he State proposes to replace [*Canton*] with a 'test' that would eliminate home rule altogether."). Home rule advocates made the same argument during the constitutional convention, but their concerns were disregarded. *See, e.g.,* 2 *Proceedings and Debates* at 1464, 1472–1474. It would seem apparent from the text itself that the "general laws" qualifier applies to the second clause of section 3, not the first. This leaves the "authority to exercise all powers of local self-government" intact without the "general laws" qualifier.

In *Fitzgerald*, Justice Wilkin's discussion of the limits placed on municipalities emphasizes that municipalities retain home rule authority after a proper interpretation of "general laws." Justice Wilkin first rejected the argument that the "general laws" limitation applied to municipal powers of local self-government, not just municipal police, sanitary, or similar regulations, explaining that

> [i]f all powers of municipal self-government must be subject to general laws, then clearly cities do not have home rule . . . . Then, to the minds of plain men, the conviction follows that the restriction upon home rule by 'general laws' is limited to 'police, sanitary and other similar regulations.'

Fitzgerald at 380 (Wilkin, J., concurring). Justice Wilkin concluded that this interpretation

> is in harmony with a common-sense rule of construction that a limitation or proviso in a grant shall not be interpreted so as to defeat or destroy the grant; it will be deemed to except from the grant only a part of the thing granted. If the thing granted be a power, then the reservation, proviso, or restriction shall be interpreted as excepting from its operation some particular mode of exercising the power or as excluding some particular thing which would otherwise be within the power.

Id. at 381 (Wilkin, J., concurring).

Following Justice Wilkin's reasoning, if municipalities remain free from any state oversight to exercise "all powers of local self-government," *see Ohioans for Concealed Carry, Inc. v. Clyde*, 2008-Ohio-4605, ¶ 24 ("If the ordinance is one relating solely to matters of self-government, 'the analysis stops.'"), quoting *Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 20 (1989), then a proper interpretation of "general laws"—no matter how much power it gives to the state—does not destroy municipal home rule.

CONCLUSION

Even after the ratification of the Home Rule Amendment, "the authority of the state is supreme over *the municipality* and its citizens as to every matter and every relationship not embraced within the field of local self-government." *Billings v. Cleveland R. Co.*, 92 Ohio St. 478, 485 (1915). As such, the Court should return to the original meaning of the Home Rule Amendment by determining that the term "general laws" in Article XVIII, Section 3 has the same meaning as that term was given at the time of ratification:

> [A] "law framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is . . . a general law."

Cincinnati St. Ry. Co., 72 Ohio St. at 109, quoting *State ex rel. Van Riper*, 40 N.J.L. 123.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above Amici Curiae Brief of The Buckeye Institute and Professor Nathaniel M. Fouch in Support of Neither Party was served this 3rd day of March 2026 via e-mail on:

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