IN THE SUPREME COURT OF OHIO

City of Cleveland, Ohio,	:	**Case No. 2018-0097**
	:	
Plaintiff-Appellee,	:	**On Appeal from the**
	:	**Eighth District Court of Appeals**
v.	:	**Cuyahoga County, Ohio**
	:	
State of Ohio,	:	**Court of Appeals**
	:	**Case No. 105500**
Defendant-Appellant.	:	

BRIEF OF AMICUS CURIAE THE OHIO MUNICIPAL LEAGUE, IN SUPPORT OF PLAINTIFF-APPELLEE CITY OF CLEVELAND, OHIO

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INTRODUCTION

THIS CASE INVOLVES MATTERS OF GREAT GENERAL AND PUBLIC INTEREST

The Ohio Municipal League (the "League" or "OML"), as amicus curiae in support of the City of Cleveland, Ohio (the "City" or "Cleveland"), urges this Court to affirm the decision of the Eighth District Court of Appeals (the "Eighth District") in *City of Cleveland, Ohio v. State of Ohio*, 8th Dist. No. 105500, 2017-Ohio-8882, 90 N.E.3d 979. The Eighth District correctly affirmed the trial court's decision and found that the enactment of R.C. 9.75 "was not a valid exercise of the legislature's authority pursuant to Ohio Constitution, Article II, Section 34[.]" The Eighth District also correctly determined that R.C. 9.75 unconstitutionally infringes upon Article XVIII, Section 3 – the Home Rule Amendment of the Ohio Constitution.

The precise issue before this Court is whether the Ohio General Assembly may pass legislation that explicitly restricts municipalities' authority to negotiate and establish terms of municipal contracts by limiting the contracting powers of local authorities on local public improvement projects. The power to negotiate and establish terms of municipal contracts is a well-recognized power of local self-government under Article XVIII, Section 3 of the Ohio Constitution.

The legal impact of this issue involves matters of great general and public interest and extends beyond R.C. 9.75 specifically. If the Eighth District's decision is reversed, it would reverse decades-long precedent that recognizes local governments' ability to negotiate and establish municipal contracts without limitation by the General Assembly. In other words, a reversal of the Eighth District's decision would provide the General Assembly free reign to control the manner in which local governments contract for local construction projects.

Affirmance of the Eighth District's decision is essential to maintaining municipalities' constitutional Home Rule authority and ensure the decades-long precedent permitting municipalities to negotiate terms and contract freely for local public improvement projects. This case implicates great general and public interest and for the reasons contained herein, the League urges this Court to affirm the decision of the Eighth District.

STATEMENT OF AMICUS INTEREST

The Ohio Municipal League ("OML") was incorporated as an Ohio non-profit corporation in 1952 by city and village officials who saw the need for a statewide association to serve the interests of Ohio municipal government. Currently, the OML represents 730 of Ohio's 931 cities and villages. The OML has six affiliated organizations: the Ohio Municipal Attorneys Association, the Municipal Finance Officers Association, the Ohio Mayors Association, the Ohio Association of Public Safety Directors, the Ohio City/County Management Association, and the Ohio Municipal Clerks Association. On a national basis, the OML is affiliated with the National League of Cities, the International Municipal Lawyers Association, the U.S. Conference of Mayors, and the International City/County Managers Association. The OML represents the collective interest of Ohio cities and villages before the Ohio General Assembly and the state elected and administrative offices. In 1984 the OML established a Legal Advocacy Program funded by voluntary contributions of the members. This program allows the OML to serve as the voice of cities and villages before the Ohio Supreme Court and the United States Courts of Appeals and Supreme Court by filing briefs amicus curiae on cases of special concern to municipal governments. The Ohio Municipal League has been accredited by the Ohio Supreme Court as a sponsor of both Continuing Legal Education Programs for attorneys and the required Mayors Court training for Mayors hearing all types of cases.

STATEMENT OF THE CASE AND FACTS

The OML hereby adopts, in its entirety, and incorporates by reference, the statement of the case and facts contained within the Brief of Plaintiff-Appellee, City of Cleveland, Ohio.

ARGUMENT

"The power of local self-government and that of the general police power are constitutional grants of authority equivalent in dignity." *Canton v. Whitman*, 44 Ohio St.2d 62, 337 N.E.2d 766 (1975). Importantly, however, "the state may not restrict the exercise of the powers of self-government within a city." *Id*. R.C. 9.75 is an unconstitutional attempt to eliminate a local authority's powers of local self-government in negotiating the terms of public improvement projects. R.C. was not a valid exercise of the General Assembly's authority under Article II, Section 34 of the Ohio Constitution, and of particular interest to the League, unconstitutionally infringes upon Section 3, Article XVIII of the Ohio Constitution – the Home Rule Amendment.

In addition to the following arguments, the League incorporates, to the extent applicable, the well-reasoned arguments and authorities contained in the brief of Plaintiff-Appellee City of Cleveland, Ohio.

Proposition of Law No. 1:

R.C. 9.75 was not a valid exercise of the legislature's authority pursuant to Ohio Constitution, Article II, Section 34.

R.C. 9.75(B) states the following:

> (1) No public authority shall require a contractor, as part of a prequalification process or for the construction of a specific public improvement or the provision of professional design services for that public improvement, to employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority.
>
> (2) No public authority shall provide a bid award bonus or preference to a contractor as an incentive to employ as laborers a certain number or percentage of

> individuals who reside within the defined geographic area or service area of the public authority.

By its express terms, R.C. 9.75 seeks to limit the contracting powers of local authorities on local public improvement projects. The State attempted to justify its enactment of R.C. 9.75 pursuant to Article II, Section 34 of the Ohio Constitution, which states that "[l]aws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power."

But R.C. 9.75 does none of those things. It does not regulate the house of labor. It does not establish a minimum wage. It does not provide comfort, health, safety, or general welfare of all employees; indeed, the group that it purports to aid – independent contractors who contract with municipalities – are *not* employees. And R.C. 9.75 does *not* establish a residency requirement. Instead, R.C. 9.75 serves only to preempt powers of local self-government and to restrict the contract terms between public authorities and contractors who chose to bid on local public improvement contracts. This flies in the face of the plain language of Article II, Section 34, the reach of which is not unlimited.

If the State's interpretation was adopted, the plain language of Article II, Section 34 of the Ohio Constitution becomes contorted to allow the General Assembly to impose all manner of restrictions on local government contracts under the guise of "comfort, health, safety, and general welfare." This would disrupt municipalities' authority to contract freely, which is a well-recognized and long-standing power of local self-government under the Home Rule Amendment of the Ohio Constitution.

Proposition of Law No. 2:

R.C. 9.75 unconstitutionally infringes upon municipal home-rule authority guaranteed by Ohio Constitution, Article XVIII, Section 3.

Moreover, the League is particularly concerned with R.C. 9.75's blatant violation of the constitutional Home Rule amendment. Section 3, Article XVIII of the Ohio Constitution – the Home Rule amendment – states that "[m]unicipalities 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." The Home Rule amendment gives municipalities the "broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a state-wide nature or interest." (Citation omitted.) *State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485, ¶ 14, 143 Ohio St. 3d 271, 37 N.E.3d 128. "The purpose of the Home Rule amendments was to put the conduct of municipal affairs in the hands of those who knew the needs of the community best, to-wit, the people of the city." *Northern Ohio Patrolmen's Benevolent Assn. v. Parma*, 61 Ohio St.2d 375, 379, fn. 1 (1980).

R.C. 9.75 – as the Eighth District correctly determined – violates Ohio's Home-Rule amendment, a constitutional amendment from which municipalities derive their powers. This Court adopted a three-part test to determine whether a state statute takes precedent over a municipal ordinance. A state statute takes precedence over a local ordinance only when all three parts are met: (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law. *Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 9. If all three prongs are not met, the state statute does not take precedent over the municipal ordinance.

There is no debate that R.C. 9.75 conflicts with the City's ordinance—Cleveland Codified Ordinances Chapter 188, commonly referred to as the Fannie Lewis Law—which imposes local hiring requirements on public construction contracts over $100,000 by requiring that a minimum of twenty percent of the total construction work hours be performed by Cleveland residents, and that no fewer than four percent of those resident work hours be performed by low-income persons.

Next, the Fannie Lewis Law is inarguably an exercise of local self-government, not an exercise of the City's police power. It is well-established by this Court that a local government's authority and power to contract is an exercise of local self-government. *Dies Elec. Co. v. City of Akron*, 62 Ohio St.2d 322, 405 N.E.2d 1026 (1980). And this Court (and other courts) has (have) consistently side with local governments' authority and ability to contract in the face of limiting or restrictive state legislation. *See, e.g., Dies, supra; see also, State ex rel. Cronin v. Wald*, 26 Ohio St.2d 22, 268 N.E.2d 581 (1971); *State ex rel. Leach v. Redick*, 168 Ohio St. 543, 157 N.E.2d 106 (1959); *Trucco Constr. Co. v. Columbus*, 10th Dist. Franklin No. 05AP-1134, 2006-Ohio-6984. Additionally, the Fannie Lewis Law does not have extraterritorial effects as it does not contain any type of residency requirement, and only impacts public constructions contracts involving construction in the City.

Finally, R.C. 9.75 is not a general law. This Court in *Canton* established a four-part test to determine whether a state statute is a general law for purposes of the Home Rule amendment. "[I]t 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*, at ¶21. R.C. 9.75 fails to meet three parts of the *Canton* "general law" test: it was not part of a statewide comprehensive legislative enactment; it only attempts to limit legislative power of municipal corporations; and it does not prescribe a rule of conduct upon citizens generally.

This Court in *Canton* was clear:

> As a rule of law, we held that the words 'general laws' as set forth in Section 3 of Article XVIII of the Ohio Constitution means [sic] statutes setting forth police, sanitary or similar regulations and not statutes which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations. (Citation omitted.)

Id. at 15. R.C. 9.75 does not set forth any regulation; it only attempts to limit the legislative powers of a municipalities' authority to contract. This is clear on its face: "No public authority shall * * * . No public authority shall * * * ." *See* R.C. 9.75(B)(1) and (2).

Moreover, the enactment of R.C. 9.75 was not part of a statewide and comprehensive legislative enactment. It was a one-off piece of legislation, advanced by a contractor association to benefit their interests by attempting to preempt constitutionally-granted powers of local self-government. *See City of Cleveland v. State*, 8th Dist. No. 105500, 2017-Ohio-8882, 90 N.E.3d 979, ¶ 25. And R.C. 9.75 does not prescribe any type of rule of conduct upon its citizens. As previously stated, and as is apparent from its plain language—"No public authority shall * * *"—R.C. 9.75 merely imposes contractual limitations on "public authorities."

This is precisely the type of legislation that is prohibited by Ohio's long-standing constitutional Home Rule amendment.

CONCLUSION

This matter extends well beyond Cleveland's Fannie Lewis Law. The General Assembly, under the guise of Article II, Section 34, has attempted to preempt and restrict municipalities' constitutionally-granted power of local self-government; specifically, municipalities' authority to

contract for local public construction projects. In addition to the fact that R.C. 9.75 was not a valid exercise of the General Assembly's authority pursuant to Article II, Section 34 of the Ohio Constitution, it is another direct attack against Ohio's Home Rule amendment.

Although this Court has recognized the troublesome application of the Home Rule amendment, there is no question that "constitutional home-rule authority retains its vitality in Ohio." *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2957, 909 N.E.2d 616. And despite the apparent lack of clarity in the General Assembly's understanding of the Home Rule amendment, it is crystal clear that R.C. 9.75 directly violates the Home Rule amendment. It infringes upon a well-established power of local self-government: the right to contract; it imposes limitations on the right to contract rather than prescribe a rule of conduct on citizens; and it was not part of a comprehensive legislative enactment.

The General Assembly cannot be permitted to legislatively undermine the Ohio Constitution, render this Court's interpretation of the Home Rule amendment meaningless, expand Article II, Section 34 to limitless bounds, and dismantle Ohio's Home Rule amendment brick by brick through legislation.

This case presents a matter of great general and public interest and will determine the power to contract and legislative restriction on the power to contract that will directly impact state and local governments throughout Ohio. For the reasons provided herein, the League respectfully requests this Court to affirm the Eighth District's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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