IN THE SUPREME COURT OF OHIO

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| CITY OF CLEVELAND | ) | Case No. 2018-0097 |
| | ) | |
| Plaintiff-Appellee | ) | On Appeal from the Cuyahoga County |
| | ) | Court of Appeals, Eight Appellate |
| -vs- | ) | District |
| | ) | |
| STATE OF OHIO | ) | Court of Appeals |
| | ) | Case No. 105500 |
| Defendant-Appellant | ) | |
| | ) | **BRIEF OF AMICUS CURIAE THE CITY OF AKRON IN SUPPORT OF PLAINTIFF-APPELLEE CITY OF CLEVELAND** |

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2. R.C. 9.75 satisfies home rule. Cleveland's Ordinance is an exercise of police power designed to serve general-welfare interests by shifting work to local residents. The challenged law is a general law that counteracts the significant extraterritorial effects residency quotas have on Ohioans living outside the relevant local jurisdiction.

## ISSUES PRESENTED

1. This Court has held that Article II, Section 34 of the Ohio Constitution grants the General Assembly broad authority to enact laws "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." What is the proper interpretation of Article II, Section 34 that gives import to its language permitting the General Assembly to provide for the comfort, health, safety, and general welfare of all employees that does not negate other provisions of the Constitution?

2. This Court has recognized that the establishment of terms in construction contracts for public works is an exercise of the local-government authority reserved for municipalities by Article XVIII, Section 3 of the Ohio Constitution. Is R.C. 9.75 an infringement upon the authority reserved for the municipalities?

## INTRODUCTION

The Ohio Constitution recognizes that municipalities, with some exceptions, have the right to manage their affairs in the manner that their residents desire. One such exception is Article II, Section 34 of the Ohio Constitution ("Section 34"), which is the primary issue before this Court in this matter. This Court must decide whether Section 34 means what it says—that it permits the General Assembly to pass laws providing for the welfare of *all* employees in the State of Ohio—or whether it means that, as long as the law theoretically, tangentially touches the life of an individual who can be described as an employee, the General Assembly can pass laws removing the rights of the residents of municipalities to self-determine the management of their city. This Court's answer will have broad implications in this state going forward.

## STATEMENT OF THE CASE

The City of Cleveland filed a complaint on August 23, 2016, seeking preliminary and permanent injunctions of R.C. 9.75.[1] Following a hearing, the trial court granted a preliminary injunction, and the parties agreed to submit the case to the court for a final decision based on the preliminary injunction briefs and the arguments set forth at the hearing. The trial court granted the permanent injunction on January 31, 2017, determining that R.C. 9.75 was not enacted pursuant to Article II, Section 34 of the Ohio Constitution and that it impermissibly infringed upon Cleveland's Home-Rule Authority set forth in Article XVIII, Section 3 of the Ohio Constitution. The State of Ohio appealed to the Eighth District Court of Appeals, which affirmed the decision of the trial court.

[1] HB 180 originally enacted the statute at issue in this case as R.C. 9.49 but it was later renumbered to R.C. 9.75. Akron will refer to the statute by its current numbering.

## LAW AND ARGUMENT

**STATE PROPOSITION OF LAW I:** R.C. 9.75 IS A VALID EXERCISE OF AUTHORITY UNDER ARTICLE II, SECTION 34 BECAUSE IT PROVIDES FOR THE GENERAL WELFARE OF EMPLOYEES BY PROTECTING THEM FROM LOCAL PREFERENCES. THUS, NO HOME-RULE ANALYSIS IS NEEDED.

The State of Ohio and its amicus argue that the trial court and the Eighth District Court of Appeals erred when it determined that R.C. 9.75 fell outside the grant of authority of Section 34. Specifically, the State asserts, relying upon *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2597, that "[t]he Supreme Court already has held that the topic of residency lands within Article II, Section 34's broad parameters." (Emphasis omitted.) Appellant's Brief at p. 12. The State's argument, however, misses the important distinction between R.C. 9.75 and the statute challenged in *Lima*: the statute in *Lima* actually addressed a condition of employment imposed by an employer upon an employee rather than a contractual term between a vendor and customer. Because R.C. 9.75 regulates a contractual term between a vendor and a municipality rather than the employer-employee relationship, it was not enacted pursuant to the authority of Section 34. Thus, this Court should overrule the State's first assignment of error.

### R.C. 9.75

Cleveland filed its complaint seeking a permanent injunction of R.C. 9.75, specifically challenging the provisions of R.C. 9.75(B):

> (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.

Cleveland alleged that R.C. 9.75(B) impermissibly infringed upon the constitutional authority of municipalities to govern themselves. The State responded that the statute was enacted pursuant to Section 34 and, therefore, superseded the Home-Rule provision of the Ohio Constitution.

**ARTICLE II, SECTION 34**

Section 34 grants the General Assembly the authority to pass laws "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." This Court " 'has repeatedly interpreted Section 34 as a broad grant of authority to the General Assembly, not as a limitation on its power to enact legislation.' " *Lima*, 122 Ohio St.3d 155, 2009-Ohio-2597, ¶ 12, quoting *Am. Assn. of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ.*, 87 Ohio St.3d 55, 61 (1999). *See also Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027, ¶ 92. In doing so, this Court has emphasized the final clause in Section 34, holding that Section 34 prevails over all other parts of the Ohio Constitution. *See, e.g., id.* at ¶ 13. Given this Court's holdings, there is no dispute that a law enacted pursuant to the authority of Section 34 would survive any challenge based upon the Ohio Constitution. However, if the other parts of the Ohio Constitution are to have any application as envisioned by its drafters, Section 34 must have some reasonable limitation in its scope.

This Court has not set forth any test to determine whether a law was enacted pursuant to the authority granted by Section 34. In the seminal cases concerning Section 34, the statutes at

issue directly addressed conditions of an employee's employment and the Supreme Court typically addressed the question in a single sentence. *See Lima* at ¶ 13 ("By allowing city employees more freedom of choice of residency, R.C. 9.481 provides for the employees' comfort and general welfare."). *See also Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 13 (1989) ("R.C. Chapter 4117, the Public Employees' Collective Bargaining Act, is indisputably concerned with the "general welfare" of employees."). Despite the State's suggestion to the contrary, R.C. 9.75 cannot be summarily addressed in the same manner because it does not regulate the employer-employee relationship but the relationship between a vendor (the contractor) and a customer (the municipality). Therefore, this Court must determine whether the Section 34 grant of authority would extend to this relationship.

**SECTION 34 IS LIMITED TO THE CONDITIONS SURROUNDING EMPLOYMENT**

As noted above, this Court has upheld legislation that is properly enacted within the scope of the grant of authority in Section 34. With R.C. 9.75, however, the General Assembly seeks to extend the scope of the authority specified in Section 34 beyond the regulation of employment in Ohio to any commercial transaction that, in the abstract, could be deemed to potentially affect the employment of an individual. If the State succeeds in expanding Section 34 in this manner, there is little that would not fall within the purview of the section's grant of authority, and the section would swallow the rest of the Ohio Constitution. Therefore, in order to effectuate all of the provisions of the Ohio Constitution, there must be some limit to the authority granted by Section 34.

" 'The first step in determining the meaning of a constitutional provision is to look at the language of the provision itself.' " *State ex rel. King v. Summit Cty. Council*, 99 Ohio St.3d 172, 2003-Ohio-3050, ¶ 35, quoting *State ex rel. Maurer v. Sheward*, 71 Ohio St.3d 513, 520 (1994).

" 'Words used in the Constitution that are not defined therein must be taken in their usual, normal, or customary meaning.' " *Id.*, quoting *State ex rel. Taft v. Franklin Cty. Court of Common Pleas*, 82 Ohio St.3d 480, 481 (1998). This Court has held that Section 34's provision "that no other provision of the Constitution may impair the intent, purpose and provisions of the * * * section" is unambiguous. *See, e.g., State ex rel. Bd. of Trustees v. Bd. of Trustees*, 12 Ohio St.2d 105, 107 (1967). However, it has not specifically examined and interpreted the provision 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."

The first portion of the phrase as to regulation of hours of labor and establishing a minimum wage is plain and unambiguous; there can be little confusion regarding the scope of the General Assembly's authority to regulate the hours of labor and to establish a minimum wage. Both of those powers go directly to the employee-employer relationship bearing upon *all employees* as they would normally be negotiated between those two parties. The question then becomes, however, whether the authority to provide for the comfort, health, safety, and general welfare of *all* employees similarly is focused on the relationship between employer and employee or whether it significantly diverges from the other provisions of Section 34. There is no reason to believe that it would from the plain language of the section because comfort, health, safety, and general welfare all reasonably relate to the conditions of employment between employer and employee.

Furthermore, this Court has never expanded the Section 34 beyond issues directly relating to the terms and conditions of an employee's employment. The statute in *Lima*, which the State relies upon heavily, prohibited a municipal employer from requiring its employees live within a certain area. The statute in *Am. Assn. of Univ. Professors* addressed the number of

hours the faculty were required to teach (i.e. hours of labor). In *Rocky River*, this Court upheld a statute limiting the employees' ability to strike, which has the result of interrupting the employer-employee relationship. Even in *Bd. of Trustees*, the statute in issue concerned the comfort and general welfare of the employees because it addressed how their employer needed to maintain the pension funds earned by the employees. The statutes in each of these cases addressed an issue directly related to the employee's work or relationship with an employer, and this Court did not give any indication that Section 34 could exceed the bounds of the workspace.

To the extent the State acknowledges that there is some limit to Section 34, it suggests that this Court adopt the rationale of *Dayton v. State*, 176 Ohio App.3d 469, 2008-Ohio-2589 (2d Dist.), in which the Second District concluded, "Section 34 is not limited solely to legislation that bears a nexus to the conditions of the working environment as opposed to the status of being an 'employee' -- which attaches at hiring and sheds at firing." *Id*. at ¶ 64. In reaching this conclusion, the Second District looked to the list of statutes listed in *Am. Assn. of Univ. Professors* that imposed burdens upon employees. *See Dayton* at ¶ 62, quoting *Am. Assn. of Univ. Professors* at 61. The Second District noted that "[s]ome of the statutes mentioned by the Ohio Supreme Court bear no more 'nexus' to the conditions of the 'work environment' than the residency provisions in R.C. 9.481" and, thus, concluded that Section 34 does not require a nexus. *Id.* at ¶ 64.

The Second District's decision, however, makes a logical misstep: this Court never held or otherwise indicated that the statutes listed in *Am. Assn. of Univ. Professors* were enacted pursuant to the authority of Section 34. This Court listed those statutes in response to the union in that case "urg[ing]" the Court "to construe Section 34 as a restriction upon the General Assembly's authority to pass employee-related legislation." *Id*. at 60. "Specifically, [the union]

argue[d] that only those laws benefiting employees may be enacted, while laws burdening employees are unconstitutional as violative of Section 34." *Id*. This Court rejected this argument, noting that "[t]he General Assembly routinely enacts legislation that serves precisely the purpose AAUP would have us declare impermissible." *Id*. at 61.

> R.C. 3319.22, for instance, allows rules imposing continuing education requirements upon teachers; R.C. 109.801 requires police officers to undergo annual firearm training; public employees are limited by R.C. 102.03 in gifts they may receive; and classified employees are limited in their solicitations of political contributions under R.C. 124.57. Furthermore, employees of Head Start agencies and out-of-home child care employees must submit to criminal record checks (R.C. 3301.32 and 2151.86); teachers and other school employees may be required to undergo physical examinations in certain instances at the discretion of school physicians (R.C. 3313.71); an employee who contracts AIDS from a fellow employee has no cause of action in negligence against his employer (R.C. 3701.249); and board of health employees dealing with solid and infectious waste are required to complete certain training and certification programs (R.C. 3734.02).

*Id*. After listing the statutes, the Supreme Court remarked, "None of these statutes was enacted to benefit employees, but there can be no question that they constitute important legislation that the General Assembly has the constitutional authority to enact." *Id*. Notably absent from the Court's ruling, however, was the conclusion that the listed statutes were permissible *because* of Section 34; rather, the Court looked to whether the listed statutes *violated* the Section and

concluded that they did not.[2] *See id*. Thus, to the extent the Second District extrapolated from the discussion in *Am. Assn. of Univ. Professors* that Section 34 does not require a nexus with the work environment, the Second District's decision was wrongly decided.

Furthermore, the decision of the Second District begs the question as to what could even fall outside the scope of Section 34, and the rationale advanced by the State to justify R.C. 9.75 is a good example as to why there must be some outer limits of the authority granted by Section 34. The State attempts to justify R.C. 9.75 as providing for the good of employees by arguing that Cleveland's requirement that 20% of labor performed on public works projects must be done by residents of the City deprives extraterritorial workers from performing some of the work. Essentially, the State's argument is that how one spends one's money has an effect on the labor force in the State and, therefore, Section 34 permits the State to regulate that expenditure.

The State's argument, however, could be used to justify any number of statutes regulating the behavior of customers on the basis that the way they spend their money affects the employment arena. By the same logic, the General Assembly could pass a statute prohibiting

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[2] When Akron pointed out the limited scope of this Court's discussion in *Am. Assn. of Univ. Professors* in its amicus brief below, the State responded in its reply brief, "[T]hat Court went on to hold that the challenged law was a 'valid *exercise* of legislative authority under Section 34, Article II ***.' (Emphasis added.) *Am. Assn. of Univ. Professors*, 87 Ohio St.3d at 62." State Reply Brief at p.8. First, the quoted statement was about R.C. 3345.45, not the statutes discussed by Akron in its amicus brief below or in this brief. *See Am. Assn. of Univ. Professors* at 62. Second, the statement appears to be either dicta or an imprecise conclusion by this Court because the only question before the Court was whether or not Section 34 *restricted* the General Assembly's authority. *See Am. Assn. of Univ. Professors* at 60 ("AAUP next challenges the constitutionality of R.C. 3345.45 under Section 34, Article II of the Ohio Constitution. * * * AAUP urges us to construe Section 34 as a restriction upon the General Assembly's authority to pass employee-related legislation."). Furthermore, if R.C. 3345.45 had been enacted pursuant to Section 34, there would have been no need to analyze the application of Ohio's Equal Protection Clause to the statute, which this Court did for the first four pages of the opinion, because, as this Court's precedent makes clear, Section 34 supersedes the Ohio Equal Protection Clause. *See, e.g., Lima*, 122 Ohio St.3d 155, 2009-Ohio-2597, at ¶ 12. In other words, the State's argument would reduce a significant portion of the *Am. Assn. of Univ. Professors* decision to dicta.

Ohio residents from saving any money because, by setting money aside, they inherently are not using it to buy goods and services and, thus, are reducing the number of available jobs making those goods or providing those services. It could also justify a statute forbidding residents from buying bicycles because more people biking could result in job losses of gas station employees.[3] This would be an absurd result given the language of Section 34: "Laws 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." Section 34 was clearly intended to permit the General Assembly to regulate the workplace and the employer-employee relationship. It was not intended to give the General Assembly carte blanche to regulate the economic behavior of the residents of this state (or chartered municipalities).

Accordingly, the trial court correctly decided that R.C. 9.75 was not enacted under the authority of Section 34, and, therefore, this Court should overrule the State's first assignment of error.

> **STATE PROPOSITION OF LAW II**: R.C. 9.75 SATISFIES HOME RULE. CLEVELAND'S ORDINANCE IS AN EXERCISE OF POLICE POWER DESIGNED TO SERVE GENERAL-WELFARE INTERESTS BY SHIFTING WORK TO LOCAL RESIDENTS. THE CHALLENGED LAW IS A GENERAL LAW THAT COUNTERACTS THE SIGNIFICANT EXTRATERRITORIAL EFFECTS RESIDENCY QUOTAS HAVE ON OHIOANS LIVING OUTSIDE THE RELEVANT LOCAL JURISDICTION.

In the State's second assignment of error, it argues that R.C. 9.75 does not violate Cleveland's Home-Rule authority because it is an exercise of police powers. Cleveland's

[3] Other examples of statutes that could be constitutionally permissible under Ohio Constitution with the unlimited reading of Section 34 put forth by the State: (1) a statute prohibiting anyone in the State of Ohio from owning or possessing a firearm because workplace shootings affect the health, safety, and welfare of employees; (2) a statute prohibiting any negative statements to be made about the Republican or Democratic parties because such political discussions make individuals uncomfortable and they could cause discomfort to employees. If no nexus with the workplace is required, the General Assembly could readily pass statutes similar to those and not violate any provision of the Ohio Constitution.

ordinance, however, is an act of self-governance rather than an exercise of its police powers as it regulates how Cleveland expends its own funds in its public works projects. Essentially, Cleveland is choosing with whom it wishes to do business, an act that is inherently a local issue. Therefore, this Court should overrule the State's second assignment of error.

## HOME-RULE

"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." Article XVIII, Section 3 of the Ohio Constitution. In *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, the Supreme Court set forth a three-part test for determining whether a state statute prevails over a municipal ordinance: "A state statute takes precedence over a local ordinance when (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." *Id*. at ¶ 9.

## R.C. 9.75 INFRINGES UPON CHARTER MUNICIPALITIES' EXERCISE OF LOCAL SELF-GOVERNMENT

"[T]he powers of local self-government which are granted under Section 3 of Article XVIII are essentially those powers of government which, '[i]n view of their nature and their field of operation, are local and municipal in character.' " *Dies Electric Co. v. Akron*, 62 Ohio St.2d 322, 326 (1980), quoting *State ex rel. Toledo v. Lynch*, 88 Ohio St. 71, 97 (1913). *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92, ¶ 14. "An ordinance created under the power of local self-government must relate 'solely to the government and administration of the internal affairs of the municipality.' " *Marich* at ¶ 11, quoting *Beachwood v. Cuyahoga Cty. Bd. of Elections*, 167 Ohio St. 369 (1958), paragraph one of the syllabus. "While local self-government ordinances are protected under Section 3, Article XVIII of the Ohio Constitution,

police-power ordinances 'must yield in the face of a general state law.' " *Marich* at ¶ 11, quoting *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, ¶ 23.

R.C. 9.75 specifically regulates the terms that a municipality may put into its contracts with companies constructing a public works project. The Supreme Court has previously addressed this issue with regard to retainage provisions in a construction contract. *See Dies Electric Co.*, 62 Ohio St.2d at syllabus. In *Dies Electric Co.*, Akron had enacted an ordinance containing different retainage provisions from those set forth in R.C. 153.13. The Supreme Court rejected "appellant's contention that [Akron's] ordinance is an exercise of municipal police power (as opposed to one of local self-government)" and concluded that the retainage of funds to guarantee work executed on a contract for the improvement of municipal property is a matter embraced within the field of local self-government. *See id.* at 326. *See also id.* at syllabus. Cleveland's ordinance similarly concerns contractual terms and, like the ordinance in *Dies Electric Co.*, is an exercise of its local self-government authority. Thus, it was not enacted pursuant to the local police power and, therefore, R.C. 9.75 does not prevail over its terms. *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, at ¶ 9.

The State, in arguing that Cleveland's ordinance was actually enacted pursuant to its police powers, relies heavily upon the discussion in *Am. Fin. Servs. Assn.* concerning matters of statewide concern. In *Am. Fin. Servs. Assn.*, the Supreme Court held, " ' "It is a fundamental principle of Ohio law that, pursuant to the 'statewide concern' doctrine, a municipality may not, in the regulation of local matters, infringe on matters of general and statewide concern." ' " *Id.* at ¶ 28, quoting *Reading v. Pub. Util. Comm.*, 109 Ohio St.3d 193, 2006-Ohio-2181, ¶ 33, quoting *State ex rel. Evans v. Moore*, 69 Ohio St.2d 88, 89-90 (1982). The State suggests that Cleveland's ordinance addresses an issue of state-wide concern because it has "adverse

extraterritorial effects on other (non-local) Ohioans competing for the same work." Appellant's Brief at 31.

However, those "effects," of which there is no support in the record, are just as strained as the State's attempt to drag R.C. 9.75 within the scope of Section 34. Certainly, one could also tease out scenarios in which a decision by a City could have extraterritorial effects. For example, if a City raised the salaries for employees, it would likely attract additional people from outside the area to compete for those jobs, thereby depriving other municipalities of their services. That would not be of a state-wide concern and, yet, the State would have this Court believe that a municipality's contractual terms with a construction company are. This is simply not true.

Thus, Cleveland's ordinance is a legitimate exercise of Cleveland's right to local governing authority pursuant to Article XVIII, Section 3 of the Ohio Constitution and, therefore, R.C. 9.75 does not supersede it. *Am. Fin. Servs. Assn.* at ¶ 23 ("If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.").

**R.C. 9.75 IS NOT A GENERAL LAW**

As noted above, should this Court conclude that Cleveland's ordinance was an act of local self-government, which it was, then this Court need not reach the third prong of the *Canton* test. *See Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, at ¶ 13. Nevertheless, R.C. 9.75 is not a general law and, therefore, cannot satisfy the third prong of the *Canton* test. Thus, even if this Court were to consider Cleveland's ordinance to be an exercise of its police powers, this Court should still overrule the second assignment of error because the trial court correctly concluded that R.C. 9.75 did not supersede the local ordinance.

"[G]eneral laws are enacted by the General Assembly 'to safeguard the peace, health, morals, and safety, and to protect the property of the people of the state.' " *Canton* at ¶ 13, quoting *Schneiderman v. Sesantstein*, 121 Ohio St. 80, 82-83 (1929). However, " '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.' " *Id.*, quoting *W. Jefferson v. Robinson*, 1 Ohio St.2d 113 (1965). *See also Ohioans for Concealed Carry Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, ¶ 49. "[T]o constitute a general law for purposes of home-rule analysis, 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.

R.C. 9.75 does not meet any of the elements of a general law. It is not part of a comprehensive legislative enactment. H.B. 180 only enacted R.C. 9.75, and the other statutes relied upon by the State—R.C. Chapter 153—have been recognized by the Supreme Court to not supersede local ordinances. *See Dies Electric Co.*, 62 Ohio St.2d at syllabus ("A charter municipality, in the exercise of its powers of local self-government under Section 3 of Article XVIII of the Constitution of Ohio, may, pursuant to its charter, enact retainage provisions for a contract for improvements to municipal property which differ from the retainage provisions prescribed in R. C. 153.13."). Furthermore, R.C. 9.75 does not prescribe a rule of conduct upon citizens generally; it solely regulates the behavior of municipalities. Finally, because it is not

part of a comprehensive legislative scheme, there are no other statutes that the State may rely upon to meet the fourth prong of the *Canton* test. *Compare with Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, ¶ 24, 29 (noting that, because R.C. 9.68 was part of a comprehensive legislative enactment, other statutes could satisfy the fourth element of a general law). Finally, because R.C. 9.75 only restricts the terms a municipality may put into a contract, it does not set forth a statewide regulation related to police or sanitary regulations but, instead, is aimed at reducing the legislative authority of municipalities. Thus, it cannot satisfy the third element of a general law.

A statute lacking any one of the elements set forth in *Canton* could not be considered a general law for purposes of the home-rule analysis laid out in *Canton*. R.C. 9.75, however, lacks three of the elements. Therefore, R.C. 9.75 is not a general law for purposes of the test laid out in *Canton* and, therefore, cannot supersede a lawfully enacted local ordinance such as the one enacted by Cleveland. In addition, this Court need not even reach this issue because negotiating terms of a contract is inherently an act of local self-government and, thus, R.C. 9.75 is invalid because it attempts to regulate that very behavior.

Accordingly, in light of the foregoing, this Court should overrule the State's second assignment of error and affirm the judgment of trial court.

## CONCLUSION

R.C. 9.75 regulates the relationship between a customer and a service provider, not the relationship between an employer and employee or the general working conditions of all employees. Thus, the General Assembly could not enact it pursuant to the authority in Section 34. Furthermore, R.C. 9.75 impermissibly infringes upon the Home-Rule right of municipalities

because it interferes with their power to contract, which this Court has held falls well within the scope of the authority granted to municipalities by the Home-Rule Amendment.

Accordingly, this Court should overrule the State's assignments of error and affirm the judgment of the Cuyahoga County Court of Common Pleas.

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The undersigned hereby certifies that a copy of the foregoing Brief of Amicus Curiae City of Akron was served this August 20, 2018, via electronic mail pursuant to S.Ct.Prac.R. 3.11(B)(1)(a) and 3.11(C)(1) upon the following:

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