[Cite as *State v. Athens*, 2025-Ohio-2652.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

State of Ohio,	:	Case No. 24CA31
Plaintiff-Appellee,	:	DECISION AND JUDGMENT ENTRY
v.	:	
City of Athens, et al.,	:	**RELEASED 7/16/2025**
Defendants-Appellants.	:	

APPEARANCES:

Lisa A. Eliason, Law Director, and Jessica Branner Hittle, Assistant Law Director, Athens, Ohio, for appellant.

Dave Yost, Ohio Attorney General, and Stephen P. Tabatowski, Julie M. Pfeiffer, and Michael A. Walton, Assistant Attorneys General, Columbus, Ohio, for appellee.

Philip K. Hartmann, Jesse J. Shamp, and Anthony R. Severyn, Columbus, Ohio, and Garry E. Hunter, General Counsel to the Ohio Municipal League, Columbus, Ohio, for amicus curiae The Ohio Municipal League.

Chris Tavenor, The Ohio Environmental Council, Columbus, Ohio, for amici curiae Ohio Environmental Council, The Surfrider Foundation, and Sierra Club.

Terry J. Lodge, Community Environmental Legal Defense Fund, Toledo, Ohio, for amici curiae Village Bakery & Cafe and Cool Digs, Inc.

Marc A. Fishel, Law Director, Fishel Downey Albrecht & Riepenhoff LLC, New Albany, Ohio, for amicus curiae City of Bexley.

Hess, J.

{¶1} The City of Athens appeals from a judgment of the Athens County Court of Common Pleas granting the State of Ohio a summary judgment, declaring Athens City

Code 11.03.02(A) unconstitutional, and issuing a permanent injunction enjoining Athens and its employees from enforcing Athens City Code Chapter 11.13. Athens presents three assignments of error asserting that the trial court erred (1) in finding R.C. 3736.021 is a general law, (2) in finding Athens's ordinance directly conflicts with R.C. 3736.021, and (3) in granting the State's motion for summary judgment because there is a genuine issue of material fact. For the reasons which follow, we overrule the assignments of error and affirm the trial court's judgment.

I. FACTS AND PROCEDURAL HISTORY

{¶2} The General Assembly enacted R.C. 3736.021, effective September 30, 2021, which states:

> A person may use an auxiliary container for purposes of commerce or otherwise.
>
> Nothing in this section shall be construed to prohibit or limit the authority of any county, municipal corporation, or solid waste management district to implement a voluntary recycling program.

{¶3} An "auxiliary container" is

> a bag, can, cup, food or beverage service item, container, keg, bottle, or other packaging to which all of the following apply:
>
> (a) It is designed to be either single use or reusable.
>
> (b) It is made of cloth, paper, plastic, foamed or expanded plastic, cardboard, corrugated material, aluminum, metal, glass, postconsumer recycled material, or similar materials or substances, including coated, laminated, or multilayered substrates.
>
> (c) It is designed for consuming, transporting, or protecting merchandise, food, or beverages from or at a food service operation, retail food establishment, grocery, or any other type of retail, manufacturing, or distribution establishment.

R.C. 3767.32(D)(4). *See* R.C. 3736.01(K) (as used in R.C. Chapter 3736, auxiliary container has the same meaning as in R.C. 3767.32)

{¶4} On May 1, 2023, Athens City Council passed Ordinance No. 0-25-23, which amended the Athens City Code ("ACC") to add Chapter 11.13, Reduction of Single-Use Plastic Bags. ACC 11.13.01D) states that "'[s]ingle-use, plastic carryout bag' means any bag that is made predominantly of non-compostable plastic derived from petroleum or bio-based sources, and that is not machine washable and not designed for multiple uses" but does not include "produce, meat, or product bags." ACC 11.13.02(A) states: "No store or vendor shall provide or sell a single-use, plastic carryout bag to a customer at the checkout stand, cash register, point of sale or other location for the purposes of transporting food or merchandise from the store after January 1, 2024." ACC 11.13.03(A) states: "Nothing in the ordinance prohibits a customer from using bags of any type that they bring to the store or vendor themselves or from carrying away goods that are not placed in a bag." ACC 11.13.04 sets forth the penalty for a violation of ACC 11.13.02.

{¶5} On December 27, 2023, the State filed a complaint against Athens.[1] The complaint alleged that in passing the ordinance, Athens exceeded its home-rule authority because the ordinance was in direct conflict with R.C. 3736.021, a general law of the State. The State asked the trial court to declare that the ordinance violated Ohio Const., art. XVIII, § 3 (the "Home Rule Amendment") and issue a permanent injunction enjoining Athens from enforcing the ordinance.

{¶6} Athens and the State filed cross-motions for summary judgment. Athens's motion asserted that the ordinance was valid under the Home Rule Amendment and that

[1] The complaint also named as defendants the Athens Law Director and Service-Safety Director in their official capacities, but the trial court later dismissed them as parties.

R.C. 3736.021 violated the one-subject rule of the Ohio Constitution and should be severed from the bill enacting it. The State's motion asserted that the ordinance violated the Home Rule Amendment. In responding to Athens's motion, the State further asserted Athens was not entitled to summary judgment on its one-subject rule argument.

{¶7} The trial court granted the State's motion for summary judgment and denied Athens's motion for summary judgment. The court rejected Athens's one-subject rule argument and found R.C. 3736.021 took priority over ACC 11.13.02(A) because the statute was a general law, and in passing ACC 11.13.02(A), Athens exercised its police power in direct conflict with the statute. The court issued a declaratory judgment finding ACC 11.03.02(A) unconstitutional and issued a permanent injunction enjoining Athens and its employees from enforcing ACC Chapter 11.13.

II. ASSIGNMENTS OF ERROR

{¶8} Athens presents three assignments of error:

> Assignment of Error I: The trial court erred in finding that R.C. 3736.021 is a general law.
>
> Assignment of Error II: The trial court erred in finding that the city's plastic bag ordinance directly conflicts with R.C. 3736.021.
>
> Assignment of Error III: The trial court erred in granting the State's motion for summary judgment because there is a genuine issue of material fact.[2]

III. LAW AND ANALYSIS

A. Standard of Review

[2] Some amici curiae present assignments of error, but amici curiae cannot present assignments of error to which we must respond. *See Kenwood Lincoln-Mercury, Inc. v. DaimlerChrysler Corp.*, 2002 WL 10073, *3, fn. 1 (1st Dist. Jan. 4, 2002) (explaining amicus curiae was not a party to the action, let alone an aggrieved party, and thus lacked standing to present assignment of error to which appellate court must respond).

{¶9} "We review a trial court's decision on a motion for summary judgment de novo." *Troon Mgt., Ltd. v. Adams Family Trust*, 2023-Ohio-3489, ¶ 19 (4th Dist.), citing *Harter v. Chillicothe Long-Term Care, Inc.*, 2012-Ohio-2464, ¶ 12 (4th Dist.). "We afford no deference to the trial court's decision but rather conduct an independent review to determine whether summary judgment is appropriate." *Id.*, citing *Harter* at ¶ 12. "'A summary judgment is appropriate only when: (1) there is no genuine issue of material fact; (2) reasonable minds can come to but one conclusion when viewing the evidence in favor of the nonmoving party, and that conclusion is adverse to the nonmoving party; and (3) the moving party is entitled to judgment as a matter of law.'" *Id.*, quoting *Hawk v. Menasha Packaging*, 2008-Ohio-483, ¶ 6 (4th Dist.).

{¶10} "'The party moving for summary judgment bears the initial burden to demonstrate that no genuine issues of material fact exist and that they are entitled to judgment in their favor as a matter of law.'" *Id.* at ¶ 20, quoting *DeepRock Disposal Solutions, LLC v. Forté Prods., LLC*, 2021-Ohio-1436, ¶ 68 (4th Dist.) ("*DeepRock*"). "'To meet its burden, the moving party must specifically refer to "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action," that affirmatively demonstrate that the nonmoving party has no evidence to support the nonmoving party's claims.'" *Id.*, quoting *DeepRock* at ¶ 68, quoting Civ.R. 56(C). "'Once that burden is met, the nonmoving party then has a reciprocal burden to set forth specific facts to show that there is a genuine issue for trial.'" *Id.*, quoting *DeepRock* at ¶ 68.

B. Home Rule Amendment

{¶11} "Article II, Section 1 of the Ohio Constitution confers all legislative power of the state on the General Assembly." *Schaad v. Alder*, 2024-Ohio-525, ¶ 14. "'The General Assembly has plenary power to enact legislation[.]'" *Id.*, quoting *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 2010-Ohio-6207, ¶ 10. "[T]herefore, it may 'enact *any* law that does not conflict with the Ohio or United States Constitution.'" (Emphasis in *Schaad*.) *Id.*, quoting *Kaminski v. Metal & Wire Prods. Co.*, 2010-Ohio-1027, ¶ 60.

{¶12} "Municipalities are 'political subdivisions' of the state of Ohio—'agencies through which the state administer[s] its government.'" (Bracketed text added in *Schaad*.) *Id.* at ¶ 15, quoting *State ex rel. Ramey v. Davis*, 119 Ohio St. 596, 599-600 (1929). "Municipalities may exercise only such powers as have been expressly granted to them by the Ohio Constitution or the General Assembly." *Id.*, citing *Ramey* at 599. "[T]he state has delegated certain powers to municipalities" through the Home Rule Amendment. *Id.* at ¶ 16. The Home Rule Amendment provides that "municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Const., art. XVIII, § 3. "'[T]he intention of the Home Rule Amendment was to eliminate statutory control over municipalities by the General Assembly.'" *State ex rel. Internatl. Assn. of Fire Fighters v. Sakacs*, 2023-Ohio-2976, ¶ 24, quoting *Cincinnati Bell Tel. Co. v. Cincinnati*, 81 Ohio St.3d 599, 605 (1998).

{¶13} "In determining the constitutionality of an ordinance, we are mindful of the fundamental principle requiring courts to presume the constitutionality of lawfully enacted legislation." *Arnold v. Cleveland*, 67 Ohio St.3d 35, 38 (1993), citing *Univ. Hts. v. O'Leary*,

68 Ohio St.2d 130, 135 (1981), and *Hilton v. Toledo*, 62 Ohio St.2d 394, 396 (1980). "Further, the legislation being challenged will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt." *Id.* at 38-39, citing *Hilton* at 396.

{¶14} The Supreme Court of Ohio has set forth a three-part test to evaluate claims that a municipality has exceeded its powers under the Home Rule Amendment. *Mendenhall v. Akron*, 2008-Ohio-270, ¶ 17. A state statute takes precedence over a local ordinance when "(1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute." *Id.* (reordering the three-part test set forth in *Canton v. State*, 2002-Ohio-2005). Athens concedes ACC Chapter 11.13 is an exercise of police power, so only the second and third parts of the test are at issue.[3]

C. Is the Statute a General Law?

{¶15} In *Canton*, the Supreme Court stated that for a statute to constitute a general law for purposes of home-rule analysis, it

> 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.

[3] Some amici curiae assert ACC 11.13.02 is an exercise of local self-government and raise other issues not raised by Athens on appeal; we will not address such issues. *See generally State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 2007-Ohio-5379, ¶ 26, quoting *Lakewood v. State Emp. Relations Bd.*, 66 Ohio App.3d 387, 394 (8th Dist. 1990) ("Courts have generally held that '*[a]mici curiae* are not parties to an action and may not, therefore, interject issues and claims not raised by parties'").

Canton at syllabus.[4]

{¶16} In the first assignment of error, Athens contends the trial court erred in finding that R.C. 3736.021 is a general law. Specifically, Athens claims the statute fails the first, third, and fourth prongs of the *Canton* general-law test. In the third assignment of error, Athens contends the trial court erred in granting the State's motion for summary judgment because there is a genuine issue of material fact. Because the issue identified relates to whether R.C. 3736.021 is a general law, we will address these assignments of error together.

1. Is the Statute Part of a Statewide and Comprehensive Legislative Enactment?

{¶17} Under its first assignment of error, Athens contends R.C. 3736.021 is not part of a statewide and comprehensive legislative enactment. Athens asserts that "Ohio does not have comprehensive legislation regulating the types of containers a person may use," and R.C. 3736.021 "is a standalone provision that serves only to galvanize the use of single-use plastic bags and erode municipalities' home rule authority." Athens maintains that R.C. 3734.50 directs the Ohio EPA to prepare a state solid waste management plan, and that R.C. 3736.021 was not enacted to support the plan. Athens asserts that the State argued that R.C. 3736.021 is part of the plan by suggesting that the unrestricted use of single-use plastic bags would provide a consistent supply of recyclables to meet the needs of recycling industries. Athens claims the most recent version of the plan states that single-use plastic bags are not currently a viable feedstock for recyclable materials, so the State cannot argue R.C. 3736.021 was created to provide

[4] Some amici curiae urge us to apply a different test, but this court has "'no authority to overrule decisions of the Ohio Supreme Court but is bound to follow them.'" *State v. Nesbitt*, 2023-Ohio-3434, ¶ 57 (4th Dist.), quoting *State v. Dickens*, 2008-Ohio-4404, ¶ 25 (9th Dist.).

recyclable materials. Athens asserts that if the purpose of the statute was to provide for a consistent supply of recyclables, the General Assembly would have used that language in it.

{¶18} Alternatively, under its third assignment of error, Athens suggests there is a genuine issue of material fact as to whether R.C. 3736.021 is part of a statewide and comprehensive legislative enactment and thus a general law. Athens asserts that the State tried to connect the statute to Ohio's solid waste management plan by arguing that auxiliary containers provide for a consistent supply of recyclables. Athens maintains that the State failed to submit any evidence that auxiliary containers are recyclable at all, let alone evidence that they provide a consistent supply of recyclables. Thus, Athens asserts there is a genuine issue of material fact as to whether single-use plastic bags and other auxiliary containers are recyclable at such a scale that they are providing for a consistent supply of recyclables to meet the needs of Ohio's recycling industries. Athens claims the trial court inappropriately conducted its own research and relied on facts outside the record to hold that single-use plastic bags are recyclable. And in doing so, "the trial court failed to appreciate the nuance of the State's argument" because for it to work, "single-use plastic bags must be *widely* recyclable, not sporadically or occasionally recyclable." (Emphasis in original.)

a. General Principles

{¶19} In determining whether a statute is part of a statewide and comprehensive legislative enactment, the statute should not be considered in isolation. *See Cleveland v. State*, 2010-Ohio-6318, ¶ 17-23 ("*Cleveland I*"). "'Considered in isolation, * * * a provision may fail to qualify as a general law because it prohibits a municipality from

exercising a local police power while not providing for uniform statewide regulation of the same subject matter.'" (Omission in *Cleveland I*.) *Id.* at ¶ 23, quoting *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*, 65 Ohio St.3d 242, 245 (1992). Instead, the statute should be read in pari materia with other statutes relating to the same subject matter. *See id.* at ¶ 21-23.

{¶20} "A comprehensive enactment need not regulate every aspect of disputed conduct, nor must it regulate that conduct in a particularly invasive fashion." *Id.* at ¶ 21, citing *Marich v. Bob Bennett Constr. Co.*, 2008-Ohio-92, ¶ 20. "'"[C]omprehensive" does not mean "perfect."'" *Id.*, quoting *Dayton v. State*, 2004-Ohio-3141, ¶ 89 (2d Dist.). "Nor does 'comprehensive' mean 'exhaustive.'" *Id.*

b. Analysis

{¶21} We agree with the State that R.C. 3736.021 is part of a statewide and comprehensive legislative enactment related to solid waste, source reduction, recycling, recycling market development, and litter prevention. R.C. 3734.50 mandates that the director of environmental protection "prepare a state solid waste management plan" to, among other things, "[r]educe reliance on the use of landfills for management of solid wastes[,]" R.C. 3734.50(A), "[e]stablish objectives for solid waste reduction, recycling, reuse, and minimization and a schedule for implementing those objectives[,]" R.C. 3734.50(B), and "[e]stablish a strategy that contains specific recommendations for legislative and administrative action to promote markets for products containing recycled materials generally and for promoting the use by state government of products containing recycled materials[,]" R.C. 3734.50(G). In addition, R.C. 3734.50 mandates that the

director review progress made toward achieving the statutory goals triennially and authorizes the director to adopt a revised plan.

{¶22} R.C. 3736.02(A) mandates that the director "establish and implement statewide source reduction, recycling, recycling market development, and litter prevention programs that are consistent with the state solid waste management plan adopted under section 3734.50 of the Revised Code" which must include

> (1) The assessment of waste generation within the state and implementation of source reduction practices;
>
> (2) The implementation of recycling and recycling market development activities and projects, including all of the following:
>
> (a) Collection of recyclables;
>
> (b) Separation of recyclables;
>
> (c) Processing of recyclables;
>
> (d) Facilitation and encouragement of the use of recyclables and products made with recyclables;
>
> (e) Education and training concerning recycling and products manufactured with recyclables;
>
> (f) Public awareness campaigns to promote recycling;
>
> (g) Other activities and projects that promote recycling and recycling market development.
>
> (3) Litter prevention assistance to enforce antilitter laws, educate the public, and stimulate collection and containment of litter;
>
> (4) Research and development regarding source reduction, recycling, and litter prevention, including, without limitation, research and development regarding materials or products manufactured with recyclables.

{¶23} Auxiliary containers are subject to Ohio's solid waste management plan. They are "designed for consuming, transporting, or protecting merchandise, food, or

beverages from or at a food service operation, retail food establishment, grocery, or any other type of retail, manufacturing, or distribution establishment." R.C. 3767.32(D)(4)(c). They will eventually become solid wastes. *See* R.C. 3734.01(E) ("'Solid wastes' means such unwanted residual solid or semisolid material as results from . . . commercial . . . operations . . . and includes . . . garbage . . . .").

{¶24} R.C. 3736.021 fits into Ohio's legislative scheme for solid waste management because as the State points out, the statute shapes the contours of the types of materials that may flow through Ohio's stream of commerce and into its stream of solid waste. Whether auxiliary containers are recyclable or provide a consistent supply of recyclables are not material facts, i.e., ones "that might affect the outcome of the case under the applicable substantive law." *Meredith v. ARC Industries, Inc. of Franklin Cty.*, 2024-Ohio-4466, ¶ 22 (10th Dist.), citing *Turner v. Turner*, 67 Ohio St.3d 337, 340 (1993). In R.C. 3736.021, the General Assembly has prioritized auxiliary containers as materials that may enter the stream of commerce to serve the general welfare of Ohio's citizens. Regardless whether auxiliary containers are recyclable or provide a consistent supply of recyclables, prohibiting their use to reduce solid waste generation is but one method of solid waste management. The General Assembly has made a policy decision that Ohio must rely on other methods of solid waste management with respect to auxiliary containers. Athens's disagreement with this decision does not separate R.C. 3736.021 from its place in Ohio's statewide and comprehensive solid waste management scheme. Thus, R.C. 3736.021 satisfies the first prong of the *Canton* general-law test.

2. Does the Statute Set Forth Police, Sanitary, or Similar Regulations?

{¶25} Under its first assignment of error, Athens also contends that R.C. 3736.021 does not set forth police, sanitary, or similar regulations but rather purports only to grant or limit the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations. Athens maintains there is no direct connection between the statute and the State's solid waste management plan. Athens asserts that the statute expressly limits Athens's legislative power to set forth a police regulation to protect the environment and does not serve an overriding statewide interest. Athens asserts that Ohio "has no substantive legislation related to single-use plastic bags, outside of R.C. 3736.021's general permissive grant of their use." Athens maintains that "[p]ermitting the use of single-use plastic bags does not set forth police, sanitary, or similar regulations" and that "R.C. 3736.021 can only be viewed as an attempt by the General Assembly to employ broad language to defeat the City's home rule authority to regulate single-use plastic bags."

{¶26} In discussing the third prong of the *Canton* general-law test, the Supreme Court of Ohio has stated that "'a statute which prohibits the exercise by a municipality of its home rule powers without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power.'" *Canton*, 2002-Ohio-2005, at ¶ 32, quoting *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48 (1982). The State points out that in *Clermont*, the Supreme Court considered a statutory provision prohibiting political subdivisions from regulating the construction and operation of hazardous waste facilities in pari materia with other sections of the Revised Code to conclude that "[a]ll such sections read *in pari materia* do not merely prohibit political subdivisions of the state from regulation of these facilities." *Clermont* at 46, 48.

{¶27} However, the Supreme Court has also indicated that the analysis under the third prong of the *Canton* general-law test requires consideration of the individual statutory provisions. In *Cleveland v. State*, 2014-Ohio-86 ("*Cleveland II*"), the Supreme Court considered former R.C. 4921.25, 2012 Am.Sub.H.B. No. 487, which stated:

> Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, that is engaged in the towing of motor vehicles is subject to regulation by the public utilities commission as a for-hire motor carrier under this chapter. Such an entity is not subject to any ordinance, rule, or resolution of a municipal corporation, county, or township that provides for the licensing, registering, or regulation of entities that tow motor vehicles.

Cleveland II at ¶ 5. The Supreme Court held that "[t]he statute as a whole does not merely limit the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and so satisfies the third prong of the *Canton* test." *Id.* at ¶ 13. But the Supreme Court went on to hold that the second sentence of the statute "violates the third prong of the *Canton* test by purporting to limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations." *Id.* at ¶ 16. The Supreme Court explained that "[u]nlike the first sentence of R.C. 4921.25, which subjects towing entities to PUCO regulation, the second sentence fails to set forth any police, sanitary, or similar regulations." *Id.* In addition, "the broad language of the second sentence of R.C. 4921.25 directly contradicts the language of" the Home Rule Amendment. *Id.* The Supreme Court stated that "[a]lthough R.C. 4921.25 places towing entities under the PUCO's regulation as 'for-hire motor carriers,' there may be areas in which the PUCO has not regulated, allowing municipalities to adopt and enforce regulations in those areas." *Id.* And "municipalities may supplement state law in these unregulated areas, provided that the city ordinances do not conflict with general laws." *Id.*

{¶28} R.C. 3736.021 as a whole and its individual provisions satisfy the third prong of the *Canton* general-law test. The first sentence of the statute authorizes a person to use an auxiliary container for purposes of commerce or otherwise. This sentence implicitly limits the legislative power of a municipal corporation to regulate the use of auxiliary containers. But it also serves an overriding statewide interest in managing solid waste to promote the general welfare by authorizing all persons in Ohio to use the auxiliary container they feel is best suited to their needs. Thus, this sentence sets forth a police, sanitary, or similar regulation and does not purport only to grant or limit the legislative power of a municipal corporation to adopt or enforce police, sanitary, or similar regulations. The second sentence does not grant or limit the legislative power of a municipal corporation at all. This sentence merely makes clear that the statute should not be construed to prohibit or limit the authority of counties, municipal corporations, and solid waste management districts to implement a voluntary recycling program.

3. Does the Statute Prescribe a Rule of Conduct upon Citizens Generally?

{¶29} Under its first assignment of error, Athens also contends R.C. 3736.021 does not prescribe a rule of conduct upon citizens generally because "[i]t prescribes nothing at all." Athens maintains that "[t]o 'prescribe' conduct means '[t]o dictate, ordain, or direct; to establish authoritatively (as a rule or guideline).' *Black's Law Dictionary* (9th Ed. 2009)." Athens asserts R.C. 3736.021's use of the term "'may' is permissive, not dictating, ordaining, or directing" and "does not 'establish authoritatively' that a person *shall* or *must* use a single-use plastic bag or other auxiliary container. It simply permits it." (Emphasis in original.) In its reply brief, Athens acknowledges the Supreme Court of Ohio has stated that "[a]ll sections of a chapter must be read in pari materia to determine

whether . . . the chapter as a whole prescribes a rule of conduct upon citizens generally." *Mendenhall*, 2008-Ohio-270, at ¶ 27. But Athens asserts that even reading all sections of R.C. Chapter 3736 "does not help the State's argument that R.C. 3736.021 or Chapter 3736 prescribes a rule of a conduct upon citizens generally" because "Chapter 3736 is about recycling programs and grants, not prescribing a rule of conduct upon citizens generally."

{¶30} Athens's position is not well-taken. R.C. 3736.021 prescribes, i.e., establishes authoritatively, a rule of a conduct upon citizens generally. Permitting an act is just as much prescribing a rule of conduct as forbidding an act. *See Cincinnati v. Baskin,* 2006-Ohio-6422, ¶ 17 (*"Baskin*") ("forbidding an act is just as much prescribing a rule of conduct as is permitting an act"). And by using the phrase "[a] person," the statute extends its application to citizens generally. Thus, R.C. 3736.021 satisfies the fourth prong of the *Canton* general-law test.

4. Summary

{¶31} With respect to whether R.C. 3736.021 is a general law, there are no genuine issues of material fact, reasonable minds can come to but one conclusion when viewing the evidence in favor of Athens, that conclusion is adverse to Athens, and the State is entitled to judgment as a matter of law. R.C. 3736.021 is a general law. We overrule the first and third assignments of error.

D. Is the Ordinance in Conflict with the Statute?

{¶32} In the second assignment of error, Athens contends the trial court erred in finding that the city's plastic bag ordinance directly conflicts with R.C. 3736.021. Athens asserts that ACC Chapter 11.13 and R.C. 3736.021 are not in direct conflict. Athens

maintains that R.C. 3736.021 "permits a person to use a single-use plastic bag" and "says nothing of providing an auxiliary container." In contrast, "ACC 11.13.02 prohibits a store or vendor from providing single-use plastic bags at a point of sale" but "does not prohibit the use of single-use plastic bags in commerce." In addition, Athens asserts that ACC Chapter 11.13 and R.C. 3736.021 do not conflict by implication. And in its reply brief, Athens observes that in other statutes, the General Assembly "has distinguished the word 'use' from other verbs like 'distribute' or 'sell.'"

{¶33} For purposes of conflict analysis, the Supreme Court of Ohio has "adopted as controlling the test of '"whether [an] ordinance permits or licenses that which the statute forbids and prohibits, and vice versa."'" (Bracketed text added in *Mendenhall.*) *Mendenhall*, 2008-Ohio-270, at ¶ 29, quoting *Am. Fin. Servs. Assn. v. Cleveland*, 2006-Ohio-6043, ¶ 40, and *Baskin*, 2006-Ohio-6422, at ¶ 19, quoting *Struthers v. Sokol*, 108 Ohio St. 263 (1923), paragraph two of the syllabus. "'No real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa.'" *Id.*, quoting *Struthers* at 268. "This test then, which may be labeled 'contrary directives,' is met if the ordinance and statute in question provide contradictory guidance." *Id.* "[C]onflict by implication is a subset of the *Struthers* analysis and recognizes that sometimes a municipal ordinance will indirectly prohibit what a state statute permits or vice versa." *Id.* at ¶ 31, citing *Schneiderman v. Sesanstein*, 121 Ohio St. 80 (1929). "When determining whether a conflict by implication exists, we examine whether the General Assembly indicated that the relevant state statute is to control a subject exclusively." *Id.* at ¶ 32, citing *Baskin* at ¶ 23.

{¶34} R.C. 1.42 states that "[w]ords and phrases" in the Revised Code "shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." R.C. 3736.021 does not define what it means to "use" an auxiliary container "for purposes of commerce or otherwise." "'When a term is not defined in the statute, we give the term its plain and ordinary meaning.'" *State v. Bertram*, 2023-Ohio-1456, ¶ 11, quoting *Lingle v. State*, 2020-Ohio-6788, ¶ 15. "In determining the plain and ordinary meaning of a word, courts may look to dictionary definitions of the word as well as the 'meaning that the word[ ] ha[s] acquired when * * * used in case law." (Bracketed text added and omission in *Bertram.*) *Id.* at ¶ 13, quoting *Rancho Cincinnati Rivers, L.L.C. v. Warren Cty. Bd. of Revision*, 2021-Ohio-2798, ¶ 21.

{¶35} *Black's Law Dictionary* (12th Ed. 2024) defines "commerce" as "[t]he exchange of goods and services, esp. on a large scale involving transportation between cities, states, and counties." When "use" is a verb as in R.C. 3736.021, *Black's Law Dictionary* (12th Ed. 2024) defines it to mean:

> **1.** To employ for the accomplishment of a purpose; to avail oneself of <they use formbooks>. **2.** To put into practice or employ habitually or as a usual way of doing something; to follow as a regular custom <to use diligence in research>. **3.** To do something customarily or habitually; to be wont or accustomed <I used to avoid public speaking, but no longer>. **4.** *Archaic*. To conduct oneself toward; to treat <he uses me well>. **5.** To make familiar by habit or practice; to habituate or inure <she is used to the pressure>. **6.** To take (an amount of something) from a supply <the firm uses 50 reams of paper each day>. **7.** To take advantage of (someone) for selfish purposes; to make (a person) an involuntary means to one's own ends <he uses his interns for personal errands>. **8.** To take usu. improper advantage of (a situation, position, etc.) <she uses her board membership to threaten staffers>. **9.** To regularly take; to partake of (drugs, tobacco, etc.) <he uses heroin>.

When read in context, the most appropriate definition for purposes of R.C. 3736.021 is "[t]o employ for the accomplishment of a purpose; to avail oneself of." *Black's Law Dictionary* (12th Ed. 2024).

{¶36} Athens's plastic bag ordinance forbids what R.C. 3736.021 permits. R.C. 3736.021 permits the use of an auxiliary container for purposes of commerce or otherwise. Stores and vendors which provide or sell single-use, plastic carryout bags to their customers to transport food or merchandise from the store are using an auxiliary container for purposes of commerce—they are availing themselves of or employing the bag to accomplish the purpose of exchanging goods. Because Athens's plastic bag ordinance forbids such conduct, it directly conflicts with R.C. 3736.021, and we overrule the second assignment of error.

IV. CONCLUSION

{¶37} Having overruled the assignments of error, we affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the ATHENS COUNTY COURT OF COMMON PLEAS to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.