

ORIGINAL

In the
Supreme Court of Ohio

12-1616

CITY OF CLEVELAND,

Plaintiff-Appellee,

v.

STATE OF OHIO,

Defendant-Appellant.

: Case No. 12-1616
:
: On Appeal from the
: Cuyahoga County Court of Appeals,
: Eighth Appellate District
:
: Court of Appeals Case
: No. 97679
:

**DEFENDANT-APPELLANT STATE OF OHIO'S
MEMORANDUM IN SUPPORT OF JURISDICTION**

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INTRODUCTION

In 2003, the General Assembly decided that it needed to provide uniform laws throughout the state governing vehicle towing—particularly in the areas of licensing, recordkeeping, safety, and financial responsibility. It therefore enacted R.C. 4921.30 (now R.C. 4921.25) to replace the patchwork of municipal towing ordinances with a statewide regulatory scheme administered by the Public Utilities Commission of Ohio (PUCO). The City of Cleveland, which has a series of ordinances in Chapter 677A of its Code also governing tow truck licensing, recordkeeping, and financial responsibility, filed suit seeking a declaration that the State’s towing law infringed its home rule authority in violation of Article XVIII, § 3 of the Ohio Constitution. The trial court granted summary judgment to the State. But the Eighth District reversed and invalidated the law on home rule grounds. In doing so, the Eighth District misapplied this Court’s established precedents and applied its own novel (and flawed) test. Review is warranted for two reasons.

First, this is an appeal as of right because the case raises a substantial question of constitutional law concerning the Home Rule Amendment. The decision below drastically impairs the General Assembly’s authority to legislate on matters of statewide concern. Although the Eighth District recited the correct general law test outlined in *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, the court plainly misapplied it and actually crafted two new rules found nowhere in this Court’s home rule jurisprudence. Specifically, the Eighth District concluded that the State’s towing law could not be considered a general law because the General Assembly failed to create a new legislative scheme exclusively for the regulation of towing. The Eighth District’s “new legislation” requirement finds no support in this Court’s home rule cases, nor does it make sense. A statute that leverages existing regulatory tools to address new subject matter, as opposed to creating an entirely new legislative scheme, is no less an effective or valid regulatory framework for that subject area.

The Eighth District also departed from well-settled law in applying *Canton's* uniformity prong. The court concluded that the statute was non-uniform because it exempts a particular class of towing operators from regulation. But the home rule cases make clear that the uniformity requirement embodies a geographic concern—*i.e.*, whether a statute applies uniformly across all areas of the state. The decision below transformed this geographic inquiry into one that casts doubt on any State scheme that contains exemptions or classifications. These analytical errors raise substantial constitutional questions about home rule matters and therefore warrant review.

Second, this case presents questions of great public and general interest. By enacting the State's towing law, the General Assembly concluded that this was an area of statewide concern—with implications for the State, local governments, vehicle towing businesses, and consumers—and that the existing patchwork of municipal ordinances was no longer workable. In striking that law, the Eighth District has thwarted the legislature's intent and any question about the constitutionality of the State's towing law should be resolved definitively by this Court.

For these reasons, the Court should accept jurisdiction and reverse the decision below.

STATEMENT OF THE CASE AND FACTS

A. The motorized transport of goods, people, and property is heavily regulated.

Since 1923, for-hire motor carriers—entities hired to transport goods, people, and property over public highways—have been regulated by PUCO. *See* R.C. 4921.01(B). PUCO has promulgated numerous regulations governing their operation, including requirements for (1) recordkeeping, O.A.C. 4901:2-1-01; (2) compliance inspections, *id.* 4901:2-1-03; (3) annual registration, *id.* 4901:2-1-02, 4901:2-5; (4) safety standards, which also incorporate safety

regulations issued by the U.S. Department of Transportation, *id.* 4901:2-5-01 to -28; and (5) liability insurance and bonding, *id.* 4901:2-13-01.

In 1994, Congress concluded that “the regulation of intrastate transportation of property by the States unreasonably burden[s] free trade, interstate commerce, and American consumers” and therefore that certain aspects of state and local regulation of motor carriers should be preempted. Pub. L. 103-305, § 601(a)(1)-(2), 108 Stat. 1605. Federal law thus expressly preempts state and local economic regulation “related to price, route, or service of any motor carrier. . . with respect to the transportation of property.” 49 U.S.C. § 14501(c). But there are exceptions for vehicle towing: States and their political subdivisions may regulate the safety, vehicle size and weight, insurance requirements, and pricing for non-consensual vehicle tows. 49 U.S.C. § 14501(c)(2)(A), (C).

B. In 2003, the General Assembly enacted statewide regulations to replace the patchwork of municipal ordinances governing tow truck operators.

Historically, the regulation of tow truck operators in Ohio was left largely to local governments. But in 2003, the General Assembly passed Am. Sub. H.B. No. 87 (2003). Through this bill, the legislature enacted R.C. 4921.30 (now R.C. 4921.25¹), which places tow truck operators within PUCO’s jurisdiction and exempts them from any local ordinance concerning the licensure, registration, or regulation of towing operations:

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.

¹ Earlier this year, the General Assembly made significant revisions to R.C. Chapter 4921, including rescinding and renumbering R.C. 4921.30—now R.C. 4921.25. See Am. Sub. H.B. 487 (2012).

R.C. 4921.25. Thus, after the enactment of this bill, the same regulations in the Ohio Administrative Code that govern the operation of for-hire motor carriers—outlined above—apply to vehicle-towing companies.

C. The City of Cleveland sought a declaration that R.C. 4921.25 is unconstitutional; the trial court upheld the statute, but the Eighth District reversed and invalidated the law on home rule grounds.

Six years after the State's towing law went into effect, the City sued, seeking a declaration that the statute violates the Home Rule Amendment. Applying this Court's general law test outlined in *City of Canton*, the trial court granted summary judgment to the State, concluding that R.C. 4921.25 "is a general law that does not infringe on the City of Cleveland's home rule authority." Journal Entry and Op. 2, Nov. 15, 2011 ("Ex. B"). The court found that R.C. 4921.25 is part of R.C. Chapter 4921, "which constitutes a statewide and comprehensive legislative enactment to further state policy and confers upon PUCO the power and authority to supervise and regulate motor transportation companies, or MTCs." *Id.* The trial court also found that the statute "applies to all parts of the state alike and operates uniformly through the state." *Id.* And it concluded that, "by its language," the statute "is directed to towing entities and not to any legislative body" and "does not grant or limit any municipality's legislative power." *Id.*

The City appealed and the Eighth District reversed in a 2-1 decision, concluding that R.C. 4921.25 failed the four-part *Canton* test. *City of Cleveland v. State* ("App. Op."), No. 97679, 2012-Ohio-3572, ¶ 42 (8th Dist.) ("Ex. A"). The majority said R.C. 4921.25 is not a general law because it is not part of a comprehensive, statewide scheme governing tow truck operators. The court reached this conclusion because there was no legislative plan enacted specifically for tow truck enterprises; instead, these entities were added to the "existing scheme" that "pertains to for-hire motor carriers." *Id.* ¶ 34. The majority also determined that the statute failed *Canton's*

uniformity prong because it exempts certain towing entities from regulation. Thus, according to the majority, R.C. 4921.25 could not be considered a general law under the *Canton* test.

One judge dissented, noting that the majority's requirement that PUCO's towing regulations be "newly enacted" and "specific[] tow truck regulations" in order to satisfy *Canton*'s statewide-comprehensive-enactment prong is not actually part of the *Canton* general law test. *App. Op.* ¶ 47. Heeding this Court's command to consider the entire statutory enactment, the dissent concluded that the State's towing law, along with PUCO's pre-existing regulatory framework, is "an undisputed statewide legislative enactment." *Id.* ¶ 48. The dissent also found that the State's towing law meets the remaining three prongs of the general law test and therefore concluded that "the City failed to meet its burden of showing beyond a reasonable doubt that the Uniform Towing Law violated the Ohio Constitution." *Id.* ¶¶ 50-55, 58.

THE CASE PRESENTS SUBSTANTIAL CONSTITUTIONAL QUESTIONS AND IS OF PUBLIC AND GREAT GENERAL INTEREST

A. The Eighth District's misapplication of the *Canton* test improperly constrains the General Assembly's authority to enact uniform, statewide regulations.

Under the Home Rule Amendment, "[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." Ohio Constitution, Article XVIII, § 3. Although the Home Rule Amendment is "designed to give the 'broadest possible powers of self-government in connection with all matters which are *strictly* local,'" it was never intended to "impinge upon matters which are of a state-wide nature or interest." *Am. Fin. Servs. Ass'n v. City of Cleveland* ("AFSA"), 112 Ohio St. 3d 170, 2006-Ohio-6043, ¶ 30 (citation omitted) (emphasis in original). Therefore, an ordinance involving an exercise of police power—as opposed to self-governance—"must yield" to conflicting general state laws. *Id.* ¶ 23.

This Court's four-part test for identifying a general law is well-known. The 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*, 2002-Ohio-2005, ¶ 21.

The Eighth District's analysis departed from that precedent, and the court instead applied its own test to conclude that the State's towing law is not a general law. That flawed analysis merits this Court's attention.

In addressing the first *Canton* prong, the majority concluded that R.C. 4921.25 is not part of a comprehensive legislative scheme because "[t]o date, the legislature has not set forth a comprehensive plan or scheme for the licensing, regulation, or registration of tow truck enterprises." *App. Op.* ¶ 34. For the majority, it was not enough that the General Assembly brought vehicle towing within PUCO's regulatory scheme governing for-hire motor carriers. Instead, without explanation, the majority declared that the "considerable state and federal regulation of motor carriers" now governing tow truck operators is insufficient to establish a comprehensive, statewide scheme for regulating towing. *Id.* This same reasoning drove the majority's resolution of the third and fourth *Canton* prongs. *Id.* ¶¶ 39-41. That is, according to the majority, because the General Assembly has not enacted a *new* regulatory scheme targeted at towing, R.C. 4921.25 is neither part of a legislative scheme setting forth police regulations nor part of a scheme prescribing a rule of conduct upon citizens generally, but merely an attempt to limit municipal police regulations. *Id.*

For the majority, the fact that the General Assembly chose to include vehicle towing within PUCO's existing regulatory framework rather than enact new legislation was dispositive. But this "new legislation" requirement finds no support in law or logic. Prior to 2003, vehicle towing was regulated, if at all, at the local level. However, in 2003, the General Assembly decided towing was an area of statewide concern that required uniform regulation. The Eighth District offers no explanation as to why the legislature's choice to include towing within an existing framework, instead of enacting towing-specific regulations, fails to establish comprehensive, statewide regulation of towing. It simply ignored the legislature's chosen regulatory solution and proclaimed that no legislative scheme for towing exists. But the Eighth District's apparent preference for a different approach, standing alone, will not suffice to support its conclusion that R.C. 4921.25 is not a general law.

The Eighth District also strayed in concluding that the State's towing law offends *Canton's* uniformity prong. According to the court, the statute does not operate uniformly because "private tow truck companies" are exempt from PUCO regulations. *App. Op.* ¶¶ 36-38. Presumably, the majority's mention of "private" towing entities refers to the separate regulatory framework in place for "private motor carriers"—also overseen by PUCO. The difference between private and for-hire motor carriers is that for-hire motor carriers (including tow trucks) transport goods or property "for compensation," R.C. 4921.01(B). Private carriers (including private tow truck operators), in contrast, are entities that use their own vehicles to transport property or merchandise—for example, an automobile dealership using its own tow truck to carry cars to and from its lot. *See* R.C. 4921.01(B) ("Private motor carrier" means a person who is not a for-hire motor carrier but is engaged in the business of transporting persons or property by motor vehicle."). Although private motor carriers (including private tow truck operators)

need not register with PUCO, they are subject to the same safety standards. *See, e.g.*, O.A.C. 4901:2-5-01(A) (safety standards apply to “all motor transportation companies as defined in 4921.02 and all private motor carriers . . . as defined in R.C. 4923.02”).

That a particular class of tow truck operator may be exempt from regulation under R.C. Chapter 4921 does not render application of R.C. 4921.25 non-uniform. *Canton*’s second prong asks whether the statute at issue “app[lies] to all parts of the state and operate[s] uniformly throughout.” *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, ¶ 21. The inquiry thus focuses on geographic uniformity. R.C. 4921.25 raises no such concern.

Canton itself—which the Eighth District cites in support of its uniformity analysis—makes clear that the relevant question is one of geographic disparity. There, this Court concluded that the statute at issue was non-uniform because it would have “effectively appl[ied] only in older areas of the state.” *Canton*, 2002-Ohio-2005, ¶ 30. The Eighth District greatly expanded the scope of *Canton*’s uniformity analysis and in doing so, called into question—for home rule purposes—any legislative scheme that contains regulatory exceptions or classifications, even where the regulations themselves apply to all parts of the State equally.

The decision below warps the *Canton* test by inexplicably grafting onto it a “new legislation” requirement. In addition, the Eighth District transformed *Canton*’s uniformity inquiry from one narrowly focused on geography into a de facto requirement for regulation free of exceptions or classifications. The Eighth District’s reasoning reflects a departure from this Court’s home rule cases and hampers the General Assembly’s ability to identify matters of statewide concern and craft appropriate regulatory solutions for them. Review is therefore imperative.

B. The constitutionality of the State's towing law is a matter of public and great general interest for the State, its municipalities, towing businesses, and consumers.

Review is also warranted because the issues presented in this case are of great public and general interest. The City's home rule challenge has significant implications not only for the State and municipalities across Ohio, but also for towing businesses and their customers.

The centralized regulation of towing is important to towing businesses and customers alike. It advances the State's dual aims of enhancing public safety while avoiding regulatory burdens that stifle economic growth. For consumers, the State's towing law creates in PUCO a single point of contact for addressing regulatory concerns, allowing consumers to easily investigate a towing operator's compliance with safety regulations and inspections.

Uniform regulation also serves the interests of towing operators. In the absence of statewide uniformity, they are subject to a web of different—and sometimes conflicting—municipal regulations, and multiple licensing and fee requirements. Under the State's towing law, though, operators only need to contend with one safety inspection regime, governed by a single set of standards and subject to uniform conflict-resolution procedures. O.A.C. 4901:2-5-07; O.A.C. 4901:2-7. Similarly, towing companies only need to register and pay registration fees to a single regulatory body, PUCO. Without that uniformity, towing businesses face potential compliance and licensing issues in *every* municipality in which they operate.

To be sure, there was probably a time when the local regulation of vehicle-towing was feasible because companies tended to operate in a single municipality. But as the Court has long recognized, “[d]ue to our changing society, many things which were once considered a matter of purely local concern . . . have now become a matter of statewide concern, creating the necessity for statewide control.” *State ex rel. McElroy v. City of Akron*, 173 Ohio St. 189, 192 (1962).

The ubiquity of towing companies and their increased ability to operate across multiple local jurisdictions means that towing has become an arena in which statewide regulation is necessary.

Resolution of this case will benefit the State and local governments alike, clarifying for each their respective role in towing regulations going forward. The Court should therefore accept jurisdiction and resolve the constitutionality of the State's towing law.

ARGUMENT

The State of Ohio's Proposition of Law No. 1:

Because R.C. 4921.25 is part of a comprehensive, statewide legislative framework that regulates tow truck operations, it is a general law that displaces municipal tow truck ordinances.

When evaluating a home rule dispute, this Court uses a familiar three-step inquiry. The Court first determines whether the subject matter involves an exercise of local self-government or the police power. *AFSA*, 2006-Ohio-6043, ¶ 24; *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, ¶ 17. If the matter relates only to local self-governance, “the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.” *AFSA*, 2006-Ohio-6043, ¶ 23. But if the matter involves the police power, then the court must determine whether the statute at issue is a general law. *Mendenhall*, 2008-Ohio-270, ¶ 18. If the statute is a general law, then the Court asks in step three whether the statute and ordinance are in conflict, and if they are, the ordinance gives way. *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, ¶¶ 25-26.

The first and third steps of the *Canton* inquiry are not in dispute here. There is no disagreement that the City's towing ordinances implicate the police power, and the City appears to concede that its ordinances conflict with R.C. 4921.25. See City's Eighth Dist. Br. at 12

(stating that “it is clear that the City's enactment of tow truck ordinances would be in conflict with the [State’s towing law]—if it w[ere] a general law”).

The dispute between the City and the State centers on the second step of the home rule analysis—the application of *Canton*’s general law test. R.C. 4921.25 is a general law because it satisfies all four prongs of that test: (1) it is part of a statewide and comprehensive legislative enactment; (2) it applies to all parts of the State alike and operates uniformly throughout the State; (3) it sets forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation; and (4) it prescribes a rule of conduct upon citizens generally. *Canton*, 2002-Ohio-2005, ¶ 21.

A. R.C. 4921.25 is part of a statewide, comprehensive legislative scheme governing towing.

Under *Canton*’s first prong, R.C. 4921.25 must be “part of [a] comprehensive statewide legislative regulation that relates to” towing. *AFSA*, 2006-Ohio-6043, ¶ 33. It is. R.C. 4921.25 is just one component of a comprehensive legislative scheme governing vehicle towing. In 2003, the General Assembly replaced the existing system of municipal regulation with statewide regulations administered by PUCO. Under this framework, towing companies, like any other for-hire motor carrier, are subject to extensive regulatory oversight, including recordkeeping, inspection, safety, annual registration, and financial responsibility.

To be sure, the regulations that now govern towing predate R.C. 4921.25, and rather than create a new legislative scheme, the General Assembly chose to include tow trucks within that existing regulatory framework. But neither of these circumstances changes the fact that following the enactment of the State’s towing law, vehicle towing became subject to comprehensive, statewide regulation. In fact, this Court has several times rejected home rule challenges to statutes similar to R.C. 4921.25 that have been grafted onto an existing statutory

scheme. For instance, in *Ohio Ass'n of Private Detective Agencies v. City of North Olmsted*, 65 Ohio St. 3d 242 (1992), this Court rejected a challenge to new language in R.C. 4749.09 that prohibited local licensing requirements and fees for private investigators, holding, “R.C. Chapter 4749 *in its entirety* does provide for uniform statewide regulation of security personnel” and therefore that the challenged provision was “a general law of statewide application.” *Id.* at 245 (emphasis added). Likewise, in *Clermont Envtl. Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44 (1982), the Court determined that a new provision prohibiting municipal regulation of hazardous waste disposal when “read in *pari materia*,” “is a comprehensive one.” *Id.* at 48. And most recently, in *City of Cleveland v. State*, 128 Ohio St. 3d 135, 2010-Ohio-6318, this Court rejected Cleveland’s home rule challenge to R.C. 9.68, which prohibits certain categories of municipal firearm regulation, noting that R.C. 9.68, along with “a host of state and federal laws regulating firearms,” is “part of a comprehensive statewide legislative enactment.” *Id.* ¶ 17.

By every objective measure, the General Assembly has adopted a comprehensive regulatory plan for towing, and R.C. 4921.25 is integral to that plan. The Eighth District’s contrary analysis rested on its mistaken belief that the General Assembly’s failure to establish a *new* legislative regime *solely for the purpose of tow truck regulation* compels the conclusion that no such regime exists. That is wrong. Ohio’s collection of towing laws, of which R.C. 4921.25 is a part, easily meets the statewide-and-comprehensive-legislation element of *Canton*’s first prong.

B. The legislative scheme operates uniformly throughout the State.

Under *Canton*’s second prong, R.C. 4921.25 must “apply to all parts of the state alike.” 2002-Ohio-2005, ¶ 25. A statute violates this uniformity requirement when there are geographic disparities in its application. Thus, in *Canton*, the statute at issue failed this prong because it “effectively appl[ied] only in older areas of the state . . . [in a manner] inconsistent with [its]

stated purpose, *i.e.*, to encourage placement of affordable manufactured housing units across the state.” *Id.* ¶ 30. The Eighth District said that R.C. 4921.25 failed this prong because it exempts “private” towing entities from regulation under Chapter 4921. But that observation is irrelevant and does nothing to defeat the fact that R.C. 4921.25 (and for that matter Chapter 4921) operates uniformly throughout Ohio.

C. The legislative scheme is an exercise of the State’s police power.

Under *Canton*’s third prong, the legislative framework must do more than “restrict the ability of a municipality to enact legislation.” *AFSA*, 2006-Ohio-6043, ¶ 35. It must “set[] forth police, sanitary or similar regulations.” *Id.* (citation omitted).

Plain as day, Chapter 4921 is a legislative scheme setting forth police regulations. Under that Chapter, PUCO has promulgated a litany of regulations pertaining to the licensing, recordkeeping, safety, and financial responsibility of vehicle-towing companies. *See* O.A.C. 4901:2-1-01 (recordkeeping); 4901:2-1-03(2) (compliance inspections); 4901:2-1-02 and 4901:2-5 (annual registration); 4901:2-5-01 to -28 (safety); 4901:2-13-01 (liability insurance and bonding).

The Eighth District concluded that R.C. 4921.25 failed this third *Canton* prong because “it is not part of a larger regulatory scheme for tow truck operators” and therefore constitutes nothing more than a limit on municipal police power. *App. Op.* ¶ 39. But while it is true that the statute displaces municipal control over the registration, licensure, and regulation of tow truck operators, that is only half the story. The statute is part of a legislative scheme to affirmatively establish uniform regulations for the vehicle-towing industry. And as this Court has explained, a legislative scheme that is “both an exercise of the state’s police power and an attempt to limit legislative power of a municipal corporation” does not offend *Canton*’s third prong. *Clyde*, 2008-Ohio-4605, ¶ 50 (emphasis added). Moreover, this Court has repeatedly upheld similar

statutes curtailing municipal regulation on a particular subject as part of an effort to establish statewide uniformity in the face of home rule challenges. *See, e.g., Cleveland*, 2010-Ohio-6318, ¶¶ 27-28; *AFSA*, 2006-Ohio-6043, ¶¶ 32-36; *North Olmsted*, 65 Ohio St. 3d at 245; *Clermont*, 2 Ohio St. 3d at 48.

D. The legislative scheme prescribes a rule of conduct upon citizens generally.

The fourth *Canton* prong requires that the legislative scheme under review “prescribe a rule of conduct upon citizens generally.” 2002-Ohio-2005, ¶ 21.

Viewed in its statutory context, R.C. 4921.25 is indisputably part of a legislative scheme that prescribes a rule of conduct upon citizens generally. But as with the first and third *Canton* prongs, the Eighth District held otherwise based on its determination that R.C. 4921.25 “is not a part of a system of uniform statewide regulation on the subject of tow truck operation” and therefore merely limits municipal legislative power. *App. Op.* ¶ 41. As detailed above, the Eighth District’s premise is flawed. R.C. 4921.25 is an integral part of the General Assembly’s adoption of uniform, statewide towing regulations. Thus, the Eighth District erred when it concluded that R.C. 4921.25 does not meet *Canton*’s fourth prong.

The State’s towing law meets each of *Canton* prongs. And the Eighth District plainly erred in reaching a contrary conclusion. The City simply cannot meet its heavy burden of rebutting the strong presumption of constitutionality enjoyed by R.C. 4921.25, *Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 2008-Ohio-546, ¶ 25, nor can it establish “beyond a reasonable doubt” that R.C. 4921.25 and the Home Rule Amendment are “clearly incompatible.” *Id.* (internal quotation marks omitted).

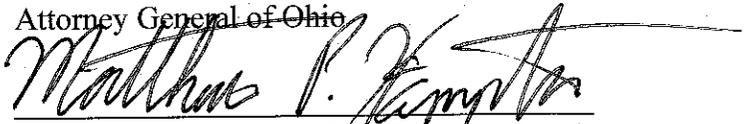
CONCLUSION

For the foregoing reasons, the Court should accept jurisdiction and reverse the decision below.

Respectfully submitted,

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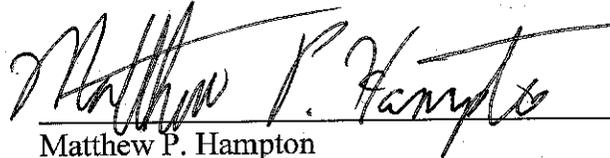
State of Ohio

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Defendant-Appellant's State of Ohio Memorandum in Support of Jurisdiction was served by U.S. mail this 24 day of September, 2012, upon the following counsel:

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APPENDIX

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97679

CITY OF CLEVELAND

PLAINTIFF-APPELLANT

vs.

STATE OF OHIO

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-687935

BEFORE: Kilbane, J., Blackmon, A.J., and Cooney, J.

RELEASED AND JOURNALIZED: August 9, 2012

EXHIBIT A

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AUG 09 2012

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MARY EILEEN KILBANE, J.:

{¶1} The city of Cleveland ("the City") appeals from the order of the trial court that rejected its challenge to the preemption provision of R.C. 4921.30. For the reasons set forth below, we conclude that R.C. 4921.30 is not a general law because it is not part of a comprehensive, statewide legislative enactment, does not operate uniformly throughout the state, does not set forth police regulations but simply purports to limit municipal legislative power, and does not prescribe a rule of conduct upon citizens generally. We therefore conclude that R.C. 4921.30 unconstitutionally limits a municipality's home-rule police powers, so we reverse the trial court's grant of summary judgment to the state and direct that the trial court enter summary judgment for the City.

{¶2} In 1981, the City adopted Cleveland Codified Ordinances ("CCO") Chapter 677A, entitled "Tow Trucks," adopted in 1981. Under the provisions of this chapter, every person driving a tow truck within the city of Cleveland must obtain a license from the City's Commissioner of Assessments and Licenses. It additionally contains provisions regarding the qualifications and fitness of tow truck operators, provisions regarding identifying information for vehicles, provisions barring an uninvited response to accident scenes, and rules outlining mandatory record keeping or "transport sheets" detailing, inter alia, the location and charges for each tow.

{¶3} In March 2003, the Ohio General Assembly adopted R.C. 4921.30,

which provides:

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.

{¶4} Also in March 2003, the Ohio General Assembly rescinded the exclusion set forth in R.C. 4921.02(A)(8), and therefore included companies “[e]ngaged in the towing of disabled or wrecked motor vehicles” within the definition of a “[m]otor transportation company.”

{¶5} This legislation, in effect, added tow trucks to the state’s PUCO regulation of transportation for-hire motor carriers, and preempted local laws pertaining to the licensing, registering, or regulation of entities that tow motor vehicles regulation.

{¶6} CCO 677A remained in effect. The City maintained that the state statute unconstitutionally interfered with its home-rule authority, and in reliance upon CCO 677A, impounded tow trucks that did not meet the City’s

licensing requirements. See *Rodriguez v. Cleveland*, 619 F.Supp.2d 461 (N.D. Ohio 2009).¹

{¶7} On March 19, 2009, the City filed a declaratory judgment against the state of Ohio, seeking determinations that (1) R.C. 4921.30 is not a “general law,” and (2) that R.C. 4921.30 violates the City’s power of local self-government to regulate the towing of motor vehicles. In its answer, the state denied that the City is entitled to declaratory relief, and the parties subsequently filed dispositive motions.

{¶8} In its motion for summary judgment, the City maintained that the state had simply added tow trucks to its PUCO scheme of regulating motor transportation companies. R.C. 4921.30 is not part of a comprehensive legislative enactment for tow truck operators, but rather, simply purports to abolish all local regulation. Moreover, the preemption language is at odds with the local regulatory authority over motor transportation companies recognized in R.C. 4921.25 that permits local subdivisions to “make reasonable local police

¹In that case, Rodriguez filed suit in federal court against the City, the arresting officers, and others alleging a violation of 42 U.S.C. 1983 and other claims, and the City defendants claimed that they were entitled to qualified immunity based upon the facial validity of CCO 677A. Ultimately, the United States Court of Appeals for the Sixth Circuit agreed that the defendants in that case were entitled to qualified immunity because it was unclear whether CCO 677A came within the Section 14501(c)(2)(A)’s exception to federal preemption, and because it was also unclear whether the ordinance was preempted by Ohio law. *Rodriguez v. Cleveland*, 439 Fed.Appx. 433, (6th Cir.2011).

regulations relating to motor transportation companies * * * not inconsistent with the authority of the PUCO.”

{¶9} In opposition, the state noted that the Ohio General Assembly has given the PUCO authority to supervise and regulate “motor transportation companies” since 1923, and this term has included tow trucks since 2003. Applying the analytic framework set forth in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, the state argued that R.C. 4921.30 does not simply limit the legislative power of cities, but is part of a comprehensive statewide scheme of regulations. The state further argued that R.C. 4921.30 operates uniformly across the state and prevents “conflicting patchwork regulation by the cities.” It additionally argued that R.C. 4921.30 is part of a safety regulatory scheme that adopts and enhances safety regulations of the U.S. Department of Transportation, and that it prescribes a rule of conduct upon citizens generally.

{¶10} The state additionally noted that R.C. 4921.30 preempts licensing, registering, and regulation of entities that tow motor vehicles, but does not preempt all local authority over tow trucks and allows municipalities to exercise local police powers over matters outside the jurisdiction of the PUCO.

{¶11} On November 17, 2011, the trial court concluded that R.C. 4921.30 is a valid general law that does not unconstitutionally infringe upon the City’s home-rule authority and granted the state’s motion for summary judgment.

{¶12} The City now appeals. For its sole assignment of error, the City argues that the trial court erred in concluding that R.C. 4921.30 is a general law and that its preemption provision does not violate municipal home-rule authority.

{¶13} With regard to procedure, we note that appellate review of a trial court's grant of summary judgment is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241.

{¶14} The moving party carries the initial burden of providing specific facts that demonstrate its entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107, 662 N.E.2d 264. Civ.R. 56(C) provides that before summary judgment may be granted, a court must determine:

- (1) no genuine issue as to any material fact remains to be litigated;
- (2) the moving party is entitled to judgment as a matter of law; and
- (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the nonmoving party.

{¶15} Once the moving party has met its initial burden, the nonmoving party must produce competent evidence establishing the existence of a genuine issue for trial. *Dresher* at 288. In responding to a motion for summary judgment, a nonmoving party may not rest on "unsupported allegations in the pleadings." *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978). Rather, Civ.R. 56 requires a nonmoving party to respond

with competent evidence to demonstrate the existence of a genuine issue of material fact.

{¶16} We additionally note that statutes enjoy a strong presumption of constitutionality. *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 41. The party challenging the constitutionality of a statute bears the burden of proving that it is unconstitutional beyond a reasonable doubt. *Id.*

{¶17} Section 3, Article XVIII of the Ohio Constitution, the home-rule amendment, gives 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.”

{¶18} As explained in *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776:

[T]he constitutional provision as adopted gave municipalities the exclusive power to govern themselves, as well as additional power to enact local health and safety measures not in conflict with general laws, [but] “exclusive state power was retained in those areas where a municipality would in no way be affected or where state dominance seemed to be required.” (Emphasis sic.)

Id. at ¶ 27, quoting Vaubel, *Municipal Home Rule in Ohio*, at 1107-1108 (1978).

{¶19} In *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 9, the Ohio Supreme Court set forth a three-part test for evaluating conflicts under the home-rule amendment. Pursuant to that test, a state statute takes

precedence over a municipal ordinance and does not unconstitutionally infringe upon municipal home-rule authority 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. Where the statute fails to meet all of these conditions, it is not a general law, and, as such, it must yield to the municipal ordinance in question. *Id.* at 151.

{¶20} In this matter, the City alleged in its complaint and in its motion for summary judgment that R.C. 4921.30 is not a "general law," and therefore, that is the focus of our analysis herein.

{¶21} "A general law has been described as one which promotes statewide uniformity." *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*, 65 Ohio St.3d 242, 244, 1992-Ohio-65, 602 N.E.2d 1147. "Once a matter has become of such general interest that it is necessary to make it subject to statewide control as to require uniform statewide regulation, the municipality can no longer legislate in the field so as to conflict with the state." *State ex rel. McElroy v. Akron*, 173 Ohio St. 189, 194, 181 N.E.2d 26 (1962).

{¶22} The *Canton* court adopted a four-part test for determining whether a statute is a general law for purposes of home-rule analysis. The 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*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at syllabus.

1. Statewide and Comprehensive Legislative Enactment

{¶23} In determining whether a challenged statute is part of a comprehensive, statewide scheme or plan, courts look to the range of activity subject to regulation under the enactment and whether it serves a statewide concern. *See Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48, 442 N.E.2d 1278 (1982); *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967.

{¶24} In this matter, we note that in the Motor Carrier Safety Act of 1984, the United States Department of Transportation, through the Federal Motor Carrier Safety Regulations, implemented safety regulations for drivers of commercial motor vehicles. *Gruenbaum v. Werner Ent., Inc.*, S.D. Ohio No. 09-CV-1041, 2011 WL 563912 (Feb. 2, 2011). Ohio adopted the safety regulations in Ohio Adm. Code 4901:2-5-02. *B&T Express, Inc. v. Pub. Util. Comm.*, 145 Ohio App.3d 656, 662, 763 N.E.2d 1241 (10th Dist.2001). *See Ohio Adm. Code 4901:2-5-02.*

{¶25} R.C. 4921.02 sets forth the general powers of the Public Utilities Commission to regulate certain carriers, and includes in its definition of

common carrier "every corporation, company * * * engag[ed] in the business of transporting persons or property, or the business of providing or furnishing such transportation service, for hire, whether directly or by lease or other arrangement, for the public in general."

{¶26} Prior to March 2003, R.C. 4921.02(A)(8) specifically excluded companies "[e]ngaged in the towing of disabled or wrecked motor vehicles" from the definition of a "[m]otor transportation company." See Am.Sub.H.B. 87.

{¶27} Over time, however, the federal government has, through various enactments, deregulated the motor carrier industry, and in 49 U.S.C. 14501(e) of the Interstate Commerce Commission Termination Act, Congress enacted a provision preempting "a State, political subdivision of a State, or political authority of 2 or more States [from enacting or enforcing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier * * * with respect to the transportation of property."

{¶28} In June 2002, the United States Supreme Court acknowledged that Section 14501 generally preempts state and local regulation, but under an exception set forth in Section 14501(c)(2)(A), states maintained "safety regulatory authority" and authority to require minimum financial responsibility. The court therefore concluded that the state power preserved in Section 14501(c)(2)(A) may be delegated to municipalities, permitting them to

exercise safety regulatory authority over local tow truck operations. See *Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 438, 122 S.Ct. 2226, 153 L.Ed.2d 430 (2002). The court also stated that “[t]ow trucks, all parties to this case agree, are ‘motor carrier[s] of property’ falling within § 14501(c)’s compass.” The court explained:

The Ohio Constitution currently grants municipalities within the State general 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 the general laws.” Art. XVIII, § 3. * * * Particularly relevant here, Ohio has exempted tow trucks from the State’s regulation of motor carriers, § 4921.02(A)(8), thus leaving tow truck regulation largely to the cities. *Cincinnati v. Reed*, 27 Ohio App.3d 115, 500 N.E.2d 333 (1985).

* * *

§ 14501(c)(2)(A) shields from preemption only “safety regulatory authority” (and “authority of a State to regulate * * * with regard to minimum amounts of financial responsibility relating to insurance requirements”). Local regulation of prices, routes, or services of tow trucks that is not genuinely responsive to safety concerns garners no exemption from § 14501(c)(1)’s preemption rule.

{¶29} In March 2003, following the *Ours Garage* decision, the Ohio General Assembly rescinded the exclusion for tow trucks set forth in R.C. 4921.02(A)(8), and therefore included companies “[e]ngaged in the towing of disabled or wrecked motor vehicles” within the definition of a “[m]otor transportation company.”

{¶30} Also in March 2003, the Ohio General Assembly adopted R.C. 4921.30, which provides:

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.

{¶31} This overview of the events surrounding the enactment of R.C. 4921.30 indicates that tow trucks were simply included within the state's regulation of for-hire motor carriers following the *Ours Garage* decision.

{¶32} Moreover, we conclude that this matter is similar to the situation presented in *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963. In *Canton*, the city's ordinance prohibited "manufactured homes" within the city limits as principal or accessory structures for residential use. Thereafter, the legislature enacted R.C. 3781.184 that pertained to manufactured homes. Subsections (A) and (B) addressed construction and safety standards, Subsection (C) of the statute prohibited political subdivisions from barring or restricting manufactured homes in single-family zones, Subsection (D) set forth an exception to subsection (C) and permitted private landowners to incorporate restrictive covenants in deeds to prohibit the inclusion of, among other things, manufactured homes.

{¶33} In concluding that Subsections (C) and (D) are not part of a statewide and comprehensive zoning plan, the Supreme Court noted:

R.C. Chapter 3781 relates to building standards but varies widely in its content * * *.

Moreover, the state does not have a statewide zoning scheme, nor does the state have a comprehensive plan or scheme for the licensing, regulation, or registration of manufactured homes. Instead, R.C. 3781.184(A) and (B) simply refer to the current federal standards regulating the construction of manufactured homes. A United States district court has held that “[t]he [Federal Manufactured Home Construction and Safety Standards Act of 1974, Section 5403, Title 42, U.S. Code] preempts only construction and safety standards and does not apply to local zoning ordinances that purport to regulate the placement of certain types of dwellings in the community.” The court held that the codes at issue (Canton Ordinances 1123.57 and 1129.11) are zoning ordinances not aimed at construction and safety standards. “Because Congress intended to regulate safety and construction only, local laws aimed at purposes outside that area are not preempted by the Act. There is no indication that Congress intended to regulate any other aspect of the manufactured home industry.” *See Ohio Manufactured Hous. Assn. v. Canton* (Dec. 4, 1998), N.D. Ohio No. 5:97 CV 1190. Accordingly, we conclude that R.C. 3781.184(C) and (D) do not provide for uniform, statewide regulation of manufactured housing.

Canton at ¶ 23-24.

{¶34} Similarly, in this matter, although there has been considerable state and federal regulation of motor carriers, there has not been a comprehensive legislative enactment with respect to tow truck enterprises. To date, the legislature has not set forth a comprehensive plan or scheme for the licensing, regulation, or registration of tow truck enterprises. Instead, the existing scheme pertains to for-hire motor carriers and adopts federal safety

regulations. This absence of a comprehensive scheme for tow truck operations stands in stark contrast with the detailed, comprehensive scheme through which the City sought, through its police powers, to regulate tow truck operations under CCO 677A. We therefore cannot infer an intent to preempt local legislation based upon broad regulatory enactment in this field. Accordingly, we conclude that R.C. 4921.30 is not part of a statewide and comprehensive legislative enactment.

2. Uniform Operation Throughout the State

{¶35} General laws must “apply to all parts of the state alike.” *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 13, quoting *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 82-83, 167 N.E. 158 (1929).

{¶36} In this matter, however, the definition of motor transportation company set forth in R.C. 4921.02(A), does not include private motor carriers, as it incorporates an exclusion for companies meeting the definition set forth in R.C. 4923.02(A), i.e., companies “engaged in the business of private carriage of persons or property, or both, or of providing or furnishing such transportation service, for hire * * * [.]”

{¶37} Therefore, private tow truck companies may have their own rules, policies, and practices. Again, *Canton* is instructive. In evaluating the statutory exception to R.C. 3781.184, which provided that, “[t]his section does not prohibit a private landowner from incorporating a restrictive covenant in

a deed, prohibiting the inclusion on the conveyed land of manufactured homes,”

the Ohio Supreme Court noted:

[T]he statute will effectively apply only in older areas of the state, i.e., cities where residential areas no longer have effective deed restrictions or no longer have active homeowner associations. Because we find that R.C. 3781.184(D) permits that which the statute prohibits, we find that it is inconsistent with the statute's stated purpose, i.e., to encourage placement of affordable manufactured housing units across the state. Thus, we hold that R.C. 3781.184(C) and (D) do not have uniform application to all citizens of the state, and as such are not general laws.

{¶38} Likewise, in this matter, R.C. 4921.30 does not apply to private tow companies or otherwise include them in the PUCO regulatory scheme for for-hire motor carriers. The exclusion for private tow truck enterprises defeats the claimed statewide concern of generally regulating tow truck enterprises, because it permits that which the statute prohibits. This exclusion is therefore inconsistent with the statute's purpose of providing uniform regulation throughout the state. As was the case in *Canton*, regulation imposed upon public for hire tow truck operators is not applicable to private tow truck enterprises and arbitrarily permits disparate rules and regulations regarding those companies. Accordingly, we find that R.C. 4921.30 does not have uniform operation throughout the state.

3. Establishes Police Regulations Rather Than Granting or Limiting Municipal Legislative Power

{¶39} Proceeding to the third prong of the general law test outlined in *Canton*, we next consider whether R.C. 4921.30 sets forth police, sanitary, or similar regulations; or, instead, simply purports only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations. Again, the legislature has not established police regulations for the operation of tow truck enterprises, and the R.C. 4921.30 preemption provision is not part of a larger regulatory scheme for tow truck operators. That is, in the years following the enactment of R.C. 4921.30, no other statutory provisions have been enacted to address such enterprises, and there is no clear indication that tow truck regulation is indeed a matter of such general interest that it is necessary to make it subject to statewide control. Like R.C. 4549.17, which was deemed unconstitutional in *Linndale v. State*, 85 Ohio St.3d 52, 1999-Ohio-434, 706 N.E.2d 1227, R.C. 4921.30 is "simply a limit on the legislative powers of municipal corporations to adopt and enforce specified police regulations." Therefore, we conclude that the preemption language simply curtails the City's police powers in this area and does not meet the third element of the *Canton* test.

4. Prescribes a Rule of Conduct Upon Citizens Generally

{¶40} With regard to the final element of the *Canton* test, the *Linndale* Court also defined general laws as “those operating uniformly throughout the state, prescribing a rule of conduct on citizens generally and operating with general uniform application throughout the state under the same circumstances and conditions.” *Linndale* at 54. Statutes that pertain to certain entities only do not prescribe a rule of conduct upon citizens generally, so they do not meet this element. *Id.* Conversely, statutes that go beyond merely limiting municipal authority and establish a rule of conduct for those who are the subject of the legislation have satisfied this element of the *Canton* test. *See Am. Fin. Servs. Assn.*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776.

{¶41} In determining whether R.C. 4921.30 prescribes a rule of conduct upon citizens generally, we conclude that it is not a part of a system of uniform statewide regulation on the subject of tow truck operation. It is a statute that simply provides that municipalities, counties, and townships may not license, register, or regulate entities that tow motor vehicles; it does not prescribe a rule of conduct upon citizens generally. Accordingly, the fourth element of the *Canton* test is not met.

{¶42} In accordance with the foregoing, R.C. 4921.30 does not meet the test set forth in *Canton*, so we conclude that it is not a general law. Further,

because R.C. 4921.30 is not a general law, it unconstitutionally attempts to limit municipal home-rule authority.

{¶43} We therefore conclude that the trial court erred in granting the state of Ohio's motion for summary judgment. We reverse that order and direct the trial court to enter summary judgment in favor of the City.

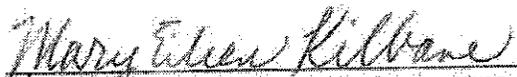
{¶44} Reversed and remanded with instructions to enter judgment in favor of appellant.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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


MARYEILEEN KILBANE, JUDGE

PATRICIA A. BLACKMON, A.J., CONCURS;
COLLEEN CONWAY COONEY, J., DISSENTS (SEE SEPARATE
DISSENTING OPINION)

COLLEEN CONWAY COONEY, J., DISSENTING:

{¶45} I respectfully dissent. I would affirm the trial court judgment.

Statewide and Comprehensive

{¶46} The first prong of the *Canton* test requires the statute in question be part of a statewide and comprehensive legislative enactment. The City argues that R.C. 4921.30 is not part of such legislative enactment, while the State argues that when taken in context with PUCO regulations, R.C. 4921.30 is clearly part of a statewide and comprehensive legislative enactment.

{¶47} The City argues that the PUCO regulations do not constitute statewide legislation because they are not 1) newly enacted, nor 2) specifically tow truck regulations. I am not persuaded by this argument because neither is a requirement under the *Canton* test.

{¶48} By defining any organization that operates tow trucks as “for-hire motor carrier[s]” under this statute, R.C. 4921.30 successfully encompassed all tow truck operators under the pre-existing laws of the PUCO. In turn, R.C. 4921.30 is part of the PUCO, an undisputed statewide legislative enactment. The City’s interpretation of the statute in question appears to occur in a vacuum, not acknowledging PUCO on a statewide basis. *See Am. Fin. Servs. Assn. v. Cleveland (“AFSA”),* 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776 (the Ohio Supreme Court found that legislation that defined covered loans and authorized the state to “solely regulate” said loans was part of comprehensive

statewide legislation). See also *Ohio Assn. of Private Detective Agencies v. N. Olmsted*, 65 Ohio St.3d 242, 1992-Ohio-65, 602 N.E.2d 1147 (Ohio Supreme Court found that a statutory provision, when considered in isolation, "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. See *Youngstown v. Evans* (1929), 121 Ohio St. 342, 168 N.E. 844." However, when the provision's chapter is read in its entirety it could reveal a statewide regulation.)

{¶49} Thus, I would find that the statute in question satisfies the first prong of the *Canton* test.

Uniformity

{¶50} The second prong of the test requires that the statute apply to all parts of the State alike and operate uniformly throughout the State.

{¶51} The State argues that R.C. 4921.30 does apply to all parts of the State alike and operates uniformly throughout the State. The City does not dispute this argument. Thus, I would find that R.C. 4921.30 satisfies the second prong of the *Canton* "general law" test.

Police, Sanitary, or Similar Regulations

{¶52} The third prong of the test requires that the statute set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation.

{¶53} The City concedes that the regulation of tow trucks in the context of traffic regulation is clearly an exercise of the State's police power. As addressed above in the first prong, prior case law indicates that individual statutes should not be read in isolation but within the larger statutory scheme. R.C. Chapter 4921 in its entirety, along with the PUCO, clearly sets forth regulations as opposed to strictly limiting the municipality's legislative power.

{¶54} Thus, I would find that R.C. 4921.30 satisfies the third prong of the *Canton* "general law" test.

Rule of Conduct Upon Citizens

{¶55} The fourth prong of the test requires that the statute prescribes a rule of conduct upon citizens generally.

{¶56} The City fails to articulate a reason why this statute does not prescribe a rule of conduct upon citizens generally, and instead rehashes its argument that the law limits the municipality's legislative power without setting forth independent regulations. The State compares R.C. 4921.30 to the statutes found in *AFSA* and in *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370, both of which were found to satisfy the fourth prong by prescribing a rule of conduct upon citizens generally. When taken as a whole, it appears to me that R.C. Chapter 4921 and the PUCO establish rules of conduct for all Ohio operators who provide intrastate towing services, without

exception. I see no distinction for private motor carriers as the majority finds, nor has the City raised such a claim.

{¶57} Thus, I would find that R.C. 4921.30 satisfies the fourth prong of the *Canton* "general law" test.

{¶58} Having satisfied the four elements of the *Canton* test, I would find that R.C. 4921.30 constitutes a "general law" and does not violate the Home Rule Amendment of the Ohio Constitution. The City has failed to meet its burden of showing beyond a reasonable doubt that R.C. 4921.30 violated the Ohio Constitution.

{¶59} Accordingly, I would affirm the trial court.

STATE OF OHIO }
CUYAHOGA COUNTY } SS.

IN THE COURT OF COMMON PLEAS

CASE NO. CV-687935



CITY OF CLEVELAND, }
 }
Plaintiff, }
 }
- vs - }
 }
STATE OF OHIO, }
 }

Defendant. }
 }

JOURNAL ENTRY AND OPINION

JOAN SYNENBERG, JUDGE:

This cause came on for hearing upon the parties' cross-motions for summary judgment. In this action for declaratory judgment, plaintiff City of Cleveland seeks a declaration that the preemption language of R.C. § 4921.30 unconstitutionally infringes upon the City's home rule authority established by Article XVIII, Section 3 of the Ohio Constitution. Defendant State of Ohio argues that R.C. § 4921.30 is a valid general law which takes precedence over any conflicted ordinances enacted by the City.

Having considered the motions for summary judgment, the court finds that R.C. § 4921.30 is a valid general law that does not unconstitutionally infringe upon the City's home rule authority established by Article XVIII, Section 3 of the Ohio Constitution. The court makes the following declarations:

1. Any person or entity that is engaged in the business of towing of motor vehicles ("towing entity") is a "motor transportation company" ("MTC") as that term is defined in sections 4905.03 and 4921.02 of the Revised Code. *R.C. 4921.01.*

2. Every towing entity is subject to regulation by the Public Utilities Commission of Ohio ("PUCO") as a for-hire motor carrier under Chapter 4921 of the Ohio Revised Code. *R.C. 4921.30.*
3. A towing 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. *R.C. 4921.30.*
4. *R.C. 4921.30* is a general law that does not infringe on the City of Cleveland's home rule authority guaranteed in O. Const. Sect. 3, Art. XVIII, known as the "Home Rule Amendment," which provides: "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."
 - a. *R.C. 4921.30* is part of *R.C. Chapter 4921* which constitutes a statewide and comprehensive legislative enactment to further state policy and confer upon PUCO the power and authority to supervise and regulate MTCs;
 - b. *R.C. 4921.30* applies to all parts of the state alike and operates uniformly through the state;
 - c. *R.C. 4921.30*, by its language, is directed to towing entities and not to any legislative body;
 - d. *R.C. 4921.30* does not grant or limit any municipality's legislative power.
5. *R.C. 4921.30* is part of *R.C. Chapter 4921*, a statewide and comprehensive legislative enactment that sets forth the policy of the state to:
 - (A) Regulate transportation by common and contract carriers by motor vehicle in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest [*R.C. 4921.03(A)*];
 - (B) Promote adequate, economical, and efficient service by such motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices [*R.C. 4921.03(B)*];
 - (C) Improve the relations between, and co-ordinate transportation by and regulation of, such motor carriers and other carriers [*R.C. 4921.03(C)*];

(D) Develop and preserve a highway transportation system properly adapted to the needs of commerce and the state [R.C. 4921.03(D)];

(E) Co-operate with the federal government and the several states, and the authorized officials thereof, and with any organization of motor carriers in the administration and enforcement of Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4905 of the Revised Code [R.C. 4921.03(E)].

6. R.C. 4921.30 is part of R.C. Chapter 4921, a statewide and comprehensive legislative enactment that confers jurisdiction on PUCO and sets forth its duties and powers to:

(A) Supervise and regulate each motor transportation company [R.C. 4921.04(A)];

(B) Fix, alter, and regulate rates [R.C. 4921.04(A)];

(C) Regulate the service and safety of operation of each motor transportation company [R.C. 4921.04(A)];

(D) Prescribe safety rules and designate stops for service and safety on established routes [R.C. 4921.04(A)];

(E) Prescribe safety rules applicable to the transportation and offering for transportation of hazardous materials in intrastate commerce within this state by motor transportation companies. * * * [R.C. 4921.04(E)];

(F) Require the filing of annual and other reports and of other data by motor transportation companies [R.C. 4921.04(F)];

(G) Provide uniform accounting systems [R.C. 4921.04(G)];

(H) Supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public to the exclusion of all local authorities, except as provided in this section and section 4921.05 of the Revised Code. [R.C. 4921.04(H)] [Emphasis added].

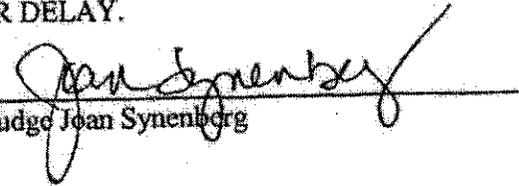
7. R.C. 4921.04(H) expressly provides that PUCO may prescribe rules affecting all MTCs, "notwithstanding the provisions of any ordinance, resolution, license, or permit enacted, adopted, or granted by any township, municipal corporation, municipal corporation and county, or county." R.C. 4921.04(H) further provides that "In case of conflict between any such ordinance, resolution, license, or permit, the order or rule of the commission shall prevail." Finally, R.C. 4921.04(H) provides that "Local subdivisions may make reasonable local police rules within their

respective boundaries not inconsistent with [Chapters 4901., 4903., 4905., 4907., 4909., and 4923 of the Revised Code, and PUCO's rules adopted under those Chapters].”

Motion for summary judgment of plaintiff City of Cleveland is denied. Motion for summary judgment of defendant The State of Ohio is granted.

Judgment accordingly.

IT IS SO ORDERED. NO JUST CAUSE FOR DELAY.

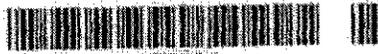


Judge Joan Synenberg

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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CITY OF CLEVELAND
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-09-687935

Judge: JOAN SYNENBERG



JOURNAL ENTRY

96 DISP. OTHER - FINAL

THIS CAUSE CAME ON FOR HEARING UPON THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT. IN THIS ACTION FOR DECLARATORY JUDGMENT, PLAINTIFF CITY OF CLEVELAND SEEKS A DECLARATION THAT THE PREEMPTION LANGUAGE OF R.C. § 4921.30 UNCONSTITUTIONALLY INFRINGES UPON THE CITY'S HOME RULE AUTHORITY ESTABLISHED BY ARTICLE XVIII, SECTION 3 OF THE OHIO CONSTITUTION. DEFENDANT STATE OF OHIO ARGUES THAT R.C. § 4921.30 IS A VALID GENERAL LAW WHICH TAKES PRECEDENCE OVER ANY CONFLICTED ORDINANCES ENACTED BY THE CITY.

HAVING CONSIDERED THE MOTIONS FOR SUMMARY JUDGMENT, THE COURT FINDS THAT R.C. § 4921.30 IS A VALID GENERAL LAW THAT DOES NOT UNCONSTITUTIONALLY INFRINGE UPON THE CITY'S HOME RULE AUTHORITY ESTABLISHED BY ARTICLE XVIII, SECTION 3 OF THE OHIO CONSTITUTION. THE COURT MAKES THE FOLLOWING DECLARATIONS (OSJ):

MOTION FOR SUMMARY JUDGMENT OF PLAINTIFF CITY OF CLEVELAND IS DENIED. MOTION FOR SUMMARY JUDGMENT OF DEFENDANT THE STATE OF OHIO IS GRANTED.

JUDGMENT ACCORDINGLY.

IT IS SO ORDERED. NO JUST CAUSE FOR DELAY.

..... OSJ

COURT COST ASSESSED TO THE PLAINTIFF(S).

OSJ

Judge Signature

Date