

ORIGINAL

In the
Supreme Court of Ohio

CITY OF CLEVELAND,	:	Case No. 2012-1616
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Cuyahoga County Court of Appeals,
v.	:	Eighth Appellate District
	:	
STATE OF OHIO,	:	Court of Appeals Case
	:	No. 97679
Defendant-Appellant.	:	

REPLY BRIEF OF DEFENDANT-APPELLANT STATE OF OHIO

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REPLY

Cleveland's argument can be reduced to one request—strike R.C. 4921.25 from the books. Cleveland does not challenge the State's regulation of tow trucks (as part of Ohio's comprehensive regulatory oversight of for-hire motor carriers), does not challenge any other law or regulations relating to tow trucks, and does not (directly) seek to vindicate any of its own towing regulations. All Cleveland seeks is expungement of R.C. 4921.25. Cleveland's request directly contradicts this Court's home-rule precedents. And the request relies on a phantom distinction between R.C. 4921.25 and other State regulations that override local law.

Cleveland's arguments are no more than a (slightly) better dressed version of the argument it brought (and lost) in *Cleveland v. State*, 128 Ohio St. 3d 135, 2010-Ohio-6318. Other than new clothing, the argument here is a clone of the argument there. In both cases the city argues that a single statutory section is “void” because it is “not a general law.” Br. in *Cleveland v. State*, No. 2009-2280, at 12 (July 1, 2010); Br. in this appeal at 12. In the earlier case, this Court rejected the invitation to analyze a single statutory subsection “in a vacuum” and upheld the law. 2010-Ohio-6318, ¶ 17. The same result is compelled here.

This time, Cleveland's argument reduces to two different ways to say that the challenged statute is not a general law. One: R.C. 4921.25 is unconstitutional because it is an “outright state preemption” of local laws. *E.g.*, Br. at 19. Two: R.C. 4921.25 is unconstitutional because it does not “allow[] for reasonable, non-conflicting” local law. *E.g.*, Br. at 29. Both perspectives contradict this Court's home-rule cases. Unwavering precedents hold that state police-power statutes *can* override all local laws. Both ways of considering the statute fail for the added reason that they inaccurately describe the challenged statute. Revised Code 4921.25 does not override all local law. Cleveland's arguments do not rescue the appellate decision's head-on collision with precedent. The judgment below should be reversed.

A. This Court consistently holds that general statutory language about displacing local regulation is both acceptable and necessary when the language is part of a regulatory scheme.

Cleveland’s central point is that R.C. 4921.25 is not a general law because it does nothing more than “attempt[] preemption” of local law. Br. at 16. Cleveland repackages this point in several ways, but each variation reduces to this argument: the General Assembly may not pass a statute that overrides local police power, even when that statute is connected to other state statutes that regulate the same subject matter.

This Court has repeatedly rejected Cleveland’s thesis, including in its most recent significant home-rule case. *See Cleveland v. State*, 2010-Ohio-6318. The caselaw rebuts Cleveland’s thesis in two ways. First, cases upholding state statutes that override local laws, show that the substance of the statewide regulations need not be in the challenged statute itself (they may reside in other statutes). Second, cases upholding local regulations demonstrate why the General Assembly *must* use statutes like R.C. 4921.25 when it wants related state regulations to act as a ceiling, not a floor for local action.

1. Statutes that show the General Assembly’s intent to regulate a topic are constitutional when they accompany substantive regulation.

The statute challenged here is no different than the statutes upheld in several recent home-rule decisions. *Cleveland v. State*—which considered statewide firearm regulations—is the most recent, and most on-point, precedent. There, the Court concluded that R.C. 9.68, which standing alone regulates *no* conduct, “is a general law that displaces municipal firearm ordinances.” *Id.* at ¶ 35. The statute—like the statute challenged here—is a general law because it cannot be viewed “in a vacuum.” *Id.* at ¶ 17. Revised Code 4921.25 must be viewed in tandem with all PUCO regulations of tow trucks.

Revised Code 4921.25 is not an isolated statute. It is one of a “host,” *id.*, of state laws regulating tow trucks as a subset of motor carriers. *See* State’s Op. Br. at 4-7 (detailing regulation of tow trucks by incorporation into regulation of for-hire motor carriers). Revised Code 4921.25 is therefore a valid general law that displaces local law when the two conflict. It may not be stricken from the books merely because it does not—on its own—establish a comprehensive system of regulating tow trucks. What matters—as in *Cleveland v. State*—is that some statutes regulate tow trucks. And *Cleveland* has never denied that the State has the “authority to regulate” tow trucks. *See* Br. at 3; *see also* State’s Op. Br. at 4-7 (detailing state regulation). Revised Code 4921.25—like the statute challenged in *Cleveland v. State*—is constitutional.

The lesson of *Cleveland v. State* is not an outlier. Other decisions of this Court consistently reject the idea that a statute, even though it is connected to a system of statewide regulation, may flunk the home-rule test when considered alone. In an earlier home-rule case (also about firearms regulation) this Court explained that “[a] statement by the General Assembly of its intent to preempt a field of legislation is a statement of legislative intent that may be considered in a home-rule analysis.” *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, ¶ 29 (citation and internal quotation marks omitted). That statement tracked the earlier holding in *American Financial* that a statute may validly show the General Assembly’s “intent to preempt municipal regulation.” *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, ¶ 31. That is, the General Assembly may do exactly what it did here—pass a law that indicates whether the legislature intended that its laws “control a subject exclusively.” *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, ¶ 32.

What is explicit in *Cleveland*, *Clyde*, *American Financial*, and *Mendenhall* has been implicit in this Court's cases for years. The 1992 decision in *North Olmstead* and the 1982 decision in *Clermont* caution against treating a single Revised Code Section "in isolation." *Ohio Ass'n of Private Detective Agencies, Inc. v. North Olmsted*, 65 Ohio St. 3d 242, 245 (1992); *Clermont Envtl. Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 48 (1982). That command implicitly rejects Cleveland's strategy here—isolate R.C. 4921.25 and refuse to consider the rest of Chapter 49 "in pari materia" with the lone section it wants struck down. *Clermont* at 48. Cleveland's request to strike one passage in the Revised Code without considering related statutes is foreclosed by longstanding precedent.

Cleveland responds that "[m]ere declarations of intent to preempt a field of legislation by the General Assembly do not trump the constitutional Home Rule authority of municipalities." Br. at 9 (internal quotation marks omitted). That is a fair statement, but it misconstrues this case. The key here is *mere*. The language in R.C. 4921.25 does not *merely* preclude certain local laws—it does so *because* it is part of a statewide system of regulating tow trucks. The General Assembly is perfectly free to pass laws that are "both an exercise of the state's police power" and a limit on local legislative power "to set forth police, sanitary, or similar regulations." *Clyde*, 2008-Ohio-4605, ¶ 50. That core insight in *Clyde* is exactly what this Court has held in case after case. And no authority Cleveland cites counters the uninterrupted line of precedent from *American Financial* through *Clyde* and *Mendenhall* to *Cleveland v. State*.

Cleveland further presses the no-preemption argument by claiming that the regulations governing tow trucks are invalid because "[t]here simply is no framework as a whole that has been enacted for tow trucks that is *separate and distinct* from the existing motor carrier PUCO regulatory scheme." Br. at 26 (internal quotation marks omitted; emphasis added). That critique

also finds no support in this Court’s cases. In *Cleveland v. State*, this Court rejected a home-rule challenge to a single statute that, like 4921.25, was connected to a larger regulatory scheme. And, as here, the connected statutes included many regulations untouched by the bill that enacted the challenged statute. That is, the challenged statute contained no regulations of firearms “separate and distinct” from all existing regulation of firearms. *See Cleveland* at ¶ 17 (describing the “host” of state firearms regulations that—along with 9.68—represent the general law of the State); *see also id.* at ¶ 21 (“And the fact that regulations of firearms appear in various code chapters does not nullify the fact that they are all part of a comprehensive enactment concerning firearms.”). The General Assembly complies with the Constitution when it adds to or adjusts existing regulations without passing additional laws “separate and distinct” for the newly regulated activity.

Common sense and common practice also undercut Cleveland’s point that R.C. 4921.25 is invalid because there is no regulatory framework “separate and distinct” for tow trucks. The General Assembly routinely adds to existing regulatory structures. And the Home Rule status of the new statute does not turn on whether the addition is contained in regulations that are “separate and distinct” from existing regulations. So when the General Assembly added “silencer” to the meaning of ordnance in the firearms statute, it did not need to enact a special silencer regulation “separate and distinct” from the existing regulations of ordnance to satisfy the Home Rule Amendment. *See* 137 Ohio Laws 3307, 3308 (1977). Another example: When the General Assembly removed several exemptions from the sales tax (making those items newly taxable), it did not need to enact a set of laws *specific* to those items “separate and distinct” from existing statutes relating to collecting and reporting the sales tax. 150 Ohio Laws 396, 2020-2030 (2003) (eliminating, among others, tax exemptions for certain prostheses and vehicles

purchased for ride-share arrangements) (formerly R.C. 5739.02(B)(19), (38)). The General Assembly need not create a new “separate and distinct” framework when an existing one will do.

Cleveland’s argument is just another way of saying that the General Assembly must pass laws reaching every tributary of a subject before it can override local regulations. Not true. “A comprehensive enactment” valid under the Home Rule Amendment “need not regulate every aspect of disputed conduct, nor must it regulate that conduct in a particularly invasive fashion.” *Cleveland v. State* at ¶ 21. Nor must a state law “be devoid of exceptions” to qualify as comprehensive. *Marich v. Bob Bennett Construction Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, ¶ 20. Revised Code 4921.25 easily passes these tests because, as detailed in the State’s opening brief, it is part and parcel of regulations covering the licensing, driver-qualification, record-keeping, and other aspects of tow truck operation. State’s Op. Br. at 4-7. When paired with those regulations, R.C. 4921.25 is a valid general law.

At bottom, Cleveland wants this Court to consider R.C. 4921.25 “in isolation” and conclude that—standing alone—it cannot be a general law. One illustration of Cleveland’s recurring misstep is the claim that the “limit on local legislative authority” approved in *Clyde* focused on comprehensive concealed-carry regulations, and not on “municipal displacement language.” Br. at 31 (internal quotation marks omitted). But parsing a regulatory scheme and focusing on the “displacement” language is the exact maneuver this Court has rejected time and again. Instead, a court “must” consider the “entire legislative scheme.” *Cleveland*, at ¶ 29; *see also Am. Fin. Servs. Assn.*, 2006-Ohio-6043 ¶ 35; *cf. Village of Linndale v. State*, 85 Ohio St. 3d 52, 55 (1999) (statute was not a “uniform statewide regulation” because it did no more than say “in effect, [that] certain cities may not enforce local regulations . . .”). Focusing on the “displacement language” alone violates the commandment against considering statutory snippets

“in isolation.” *E.g., N. Olmsted*, 65 Ohio St. 3d 242, 245. Cleveland’s argument runs head-on into this Court’s precedents and must be rejected.

2. A statute that expresses the General Assembly’s intent as to local law is not only permissible, but often necessary to achieve a legislative goal.

Cases like *Cleveland v. State* and *American Financial* show that the General Assembly sometimes intends that its substantive regulations serve as a ceiling (thus barring local regulation). But the General Assembly is free to say that its regulations are merely a floor (thus permitting local regulation). The General Assembly can do either, but direct expressions of intent are critical to avoid mistaking one intent for the other.

A statement of the General Assembly’s intentions about the relationship between state and local law will often eliminate any difficult home-rule analysis. Whether the intent is to “preempt a field” or to permit local regulation, statements about intent are valuable. Despite this, Cleveland insists that these statements about the “preemptive” effect of laws are themselves unconstitutional. That is, Cleveland thinks the Home Rule Amendment requires that courts strike statutes that illuminate legislative intent. Yet Cleveland points to no case adopting this novel view of the Home Rule Amendment. And, as shown above, this Court’s precedent consistently rejects that argument.

Beyond conflicts with precedent, Cleveland’s argument is problematic because it would confound the search for legislative intent. Without language like that in R.C. 4921.25, courts would be without firm answers as to whether the General Assembly intended that its regulatory laws “control a subject exclusively,” *Mendenhall*, 2008-Ohio-270, ¶ 32, or leave room for local law. Following Cleveland’s urging here and striking laws that offer this guidance confounds the home-rule analysis because it muddies the search for legislative intent. But the search for legislative intent is a “paramount concern,” when applying statutes. *E.g., State ex rel. Nese v.*

State Teachers Ret. Bd. of Ohio, ___ Ohio St. 3d ____, 2013-Ohio-1777, ¶ 31. The Constitution certainly does not compel the General Assembly to settle for opaque expressions of intent.

Three examples illustrate.

Before the recent home-rule battles over firearms regulation, a criminal defendant challenged a Cincinnati ordinance that limited the ammunition capacity of a gun. A state statute also limited capacity, but at a higher number than the Cincinnati law. This Court ultimately held that the local ordinance survived a home-rule challenge because “the absence of any limiting provision or declaration to the contrary” showed that the General Assembly “intended to allow municipalities to regulate the possession of lower-capacity semiautomatic firearms in accordance with local conditions.” *City of Cincinnati v. Baskin*, 112 Ohio St. 3d 279, 2006-Ohio-6422, ¶ 24. If Cleveland’s position prevails here, the General Assembly could not pass statutes expressing the contrary intent—that its regulation of the ammunition capacity of a firearm is a ceiling barring more restrictive local laws. That is not the law (as *Clyde* and *Cleveland* show).

Another example arose from billboard restrictions. When billboard owners challenged the State’s ability to regulate their signs, the Court was faced with a question about the General Assembly’s intent as to local regulations. Finding no “legislative intent . . . to preempt municipal regulation of outdoor advertising,” the Court concluded that “municipal corporations may lawfully regulate outdoor advertising devices as a legitimate exercise of local self-government if such regulations do not conflict with a general state law.” *Weir v. Rimmelin*, 15 Ohio St. 3d 55, 57 (1984). If the General Assembly had intended otherwise, it could have indicated its desire to exclude local regulation. Cleveland’s position here would strip the legislature of the most obvious way to express that intent—by saying so directly in a stand-alone statute.

A final example is *Columbus v. Molt*, 36 Ohio St. 2d 94 (1973). *Molt* concluded that state traffic-law penalties did not override a local (and greater) penalty for the same traffic offense. *Id.* at 95. The Court backed away from this “summar[[]y” analysis in *Mendenhall*, *id.* at ¶ 27, but that is exactly the point. A statement by the General Assembly about what it intended about the relationship between state and local law could have avoided the confusion. Again, Cleveland’s position frustrates the General Assembly’s ability to express its intent.

The plain lesson of this Court’s cases is that the Constitution permits the General Assembly to do exactly what Cleveland says it cannot—pass a law that expresses its intent about how related substantive regulations should interact with local regulation (including overriding all local law). Cleveland’s argument cannot square with this unbroken line of precedent. The decision below must be reversed.

B. This Court consistently holds that a general law may express the intent to displace local law by implication.

If Cleveland’s insistence on striking “preemption” language is the major theme of its brief, the minor theme is that R.C. 4921.25 fails because it does not include an explicit “conflict standard” in the statute. *E.g.* Br. at 22, 26. Although phrased differently, the bulk of this argument is no more than another way Cleveland urges its general-law point. In this variation, Cleveland claims that state statutes may not entirely displace local law; instead, Cleveland argues that they must explicitly leave room for “reasonable, non-conflicting” local regulation. Br. at 29. Cleveland sees a difference between statutes (like R.C. 4905.81(G)) that state that they only displace local laws that are in conflict with state law (which are constitutional as far as Cleveland is concerned) and statutes (like R.C. 4921.25) that displace local law without reference to any conflict with local law (which Cleveland believes are unconstitutional). As shown above, that is plainly wrong, and this Court has consistently rejected the argument.

But Cleveland’s proposed distinction between state laws that explicitly include a conflict standard and those that do not suffers another flaw. Cleveland has not shown that the statutes it wants to distinguish differ, or that the purported distinction matters for this case. And when Cleveland tries to show that the statutes somehow differ, it violates its own promise (*see* Br. at 13 n.4) that this case is about nothing more than the general-law portion of the home-rule test because it invites an analysis of whether a specific Cleveland ordinance “conflict[s]” with State law (not merely whether the state statute fails the general-law test for omitting a conflict component). *Id.* at 19.

1. Precedent consistently rejects the notion that statutes must include an explicit conflict standard to qualify as a general law.

As with its major theme, Cleveland’s minor theme contradicts this Court’s precedent. In Cleveland’s view, no statute—even a single section of the Revised Code—can survive a home-rule challenge unless it includes an explicit conflict standard limiting the override of local laws to those that actually conflict with state law. But that position is flatly inconsistent with several holdings of this Court. And it would undermine the General Assembly’s plenary authority to legislate for the good of the State.

This Court has consistently held that a statute may override local law, even when that statute contains no “conflict” language. In *Cleveland v. State*, the relevant statute said only that it created “uniform laws throughout the state” such that citizens’ rights to possess firearms could be restricted only by state or federal law. R.C. 9.68. Despite the absence of any conflict standard, this Court upheld the statute as a general law “that displaces municipal firearm ordinances.” *Id.* at ¶ 35; *see also Clyde* at ¶ 29 (blessing same statute as an expression of “intent to preempt a field of legislation”). Statutes need not include a conflict standard when displacing

local law. The General Assembly is perfectly free to declare that state law displaces local law even with no explicit conflict standard.

This Court's precedents doom Cleveland's argument that all statutes must include an explicit conflict standard. So does common sense. As this Court has recognized, the General Assembly may displace local law by deciding that the standards it sets are a ceiling so that local law may not impose greater regulation. *See, e.g., Mendenhall* at ¶ 32. In those cases, the best way to express that intent is by stating that local law is displaced. Cleveland's position would leave no room for the General Assembly to effect that result. An example illustrates. If the General Assembly decides to license a profession, and decides that there should be no local regulation, it can accomplish that with the model of *Clyde* and *American Financial* by declaring that the state license requirements are the entire regulatory scheme. The General Assembly need not—as Cleveland suggests—write the licensing law to say that it only preempts those local laws with which it conflicts and then hope that courts will not read the statute as only displacing some local regulations when its intent is to displace all of them.

2. Cleveland has not shown any differences between the statutes or that any (purported) differences matter. And when forced to show any difference, Cleveland slips into the very conflict analysis it tells the Court to avoid.

Cleveland praises R.C. 4905.81(G) because it explicitly displaces only those local ordinances that “conflict” with state statutes and regulations. *Id.* But Cleveland condemns R.C. 4921.25 for omitting similar language. The problem is that the statutes do not differ in how they override local laws. Nor does Cleveland show why even its (imagined) distinction makes a difference in this litigation. Finally, when Cleveland points to one of its own ordinances as proof that the statutes differ, it seeks the very conflict analysis (*Mendenhall* step 3) that it insists it not necessary in this case.

Cleveland's proposed distinction between R.C. 4921.25 and 4905.81(G) fails because it is illusory. A statute implicitly leaves room for local law when it sets only a floor for local regulation. And it implicitly trumps local law when it controls a subject exclusively. There is simply no need for an explicit "conflict standard" in a statute designed to override local law.

The proposed distinction also fails because both statutes have the same displacement effect. Revised Code 4921.25 provides that tow truck operators are "not subject" to local laws that provides for the "licensing, registering, or regulation" of tow trucks. This language confines the override of local law to PUCO's actual regulatory authority over tow trucks operators. As defined in R.C. 4905.81, PUCO's authority extends to six core areas, but does not "preempt" all local laws, as Cleveland argues. Br. at 19. Revised Code 4921.25—like Section 4905.81(G)—leaves room for some local law. For example, the state statutes do not override local zoning laws that may affect tow truck companies. Nor do the state statutes preempt local traffic ordinances. And the state statutes leave room for local control over public utilities (including towing concerns) owned by the locality itself. *See* R.C. 4905.02(A)(3).

Disregarding the leeway left for local law, Cleveland takes special aim at "that part of R.C. 4921.25 informing tow truck operators they can disregard all local regulations." Br. at 19. But nothing in R.C. 4921.25 tells tow truck operators that they can disregard all local laws. As the State explained in briefing below "the statute does not purport to preempt all local regulation of tow trucks." State's Eighth Dist. Br. at 19. Revised Code 4921.25 displaces local laws when they regulate matters that PUCO also regulates. Nothing more.

Cleveland further misunderstands the State's position when it says that the State supports "legislative preemption that disregards the 'conflict' standard found within the scheme established for motor carriers at R.C. 4905.81(G)." Br. at 28. But "regulation" in R.C. 4921.25

is coextensive with what PUCO regulates, and what PUCO regulates is defined by R.C. 4905.81(G). There is no difference between the local laws displaced by those two subsections.

The equivalence of R.C. 4921.25 and R.C. 4905.81(G) is reflected in this Court’s precedents. The only relevant inquiry—as this Court stressed in *American Financial* and *Cleveland v. State*—is whether the state law is a general law designed “to preempt municipal regulation.” *American Financial* at ¶ 31; see also *Cleveland v. State* at ¶ 24. That is, Cleveland’s proposed distinction does no analytical work. A state law rises or falls when measured against the Home Rule Amendment based only on whether it is a general law, not whether it explicitly mentions conflicts with local laws. As this Court has recognized, the General Assembly may express its intent to “preempt” expressly, *American Financial* at ¶ 31, or “by implication.” See, e.g., *Mendenhall* at ¶ 32.

Arguably, R.C. 4921.25 displaces *less* local law than R.C. 4905.81(G). Revised Code 4921.25 identifies the specific topics where state laws override local law (licensing, registration, and regulation) while R.C. 4905.81(G) permits only “reasonable local police rules” not “inconsistent with” PUCO statutes and regulations. The malleability of “reasonable” and “inconsistent” conceivably indicate the General Assembly’s intent that state law overrides in more than merely licensing, registration, and regulation. And that the point is even debatable shows that Cleveland’s suggested distinction between the statutes is no grounds to strike one from the Revised Code.

As we see, Cleveland cannot show that the statute it attacks does any more to override local law than the statute it favors. But even if Cleveland were right that R.C. 4921.25 displaces more local law than R.C. 4905.81(G), Cleveland has not shown, in this litigation, that any difference between the statutes has a real-world consequence. And in an effort to show a

difference, Cleveland invokes the very conflict analysis (not merely a conflict test embedded in a general law) comparing state and local law that it otherwise says it not necessary to this case. Br. at 13 n.4. Those contrasting claims reveal Cleveland’s true aim—litigate a *Mendenhall* step-3 conflict issue but argue only about the general-law test. But engaging Cleveland’s request for a true conflict analysis shows yet again the poverty of its argument—the statute Cleveland praises and the statute it attacks both override the local ordinance that Cleveland spotlights.

In this Court, Cleveland holds up only one local ordinance that it believes regulates tow trucks in a way consistent with R.C. 4905.81(G), but inconsistent with 4921.25. Br. at 19 (citing Cleveland City Ordinance 677A.11). But this ordinance must give way to state regulation even applying the conflict test that Cleveland advances. Ordinance 677A.11 governs tow trucks depending on whether they are “licensed” by *Cleveland*. That predicate requirement conflicts with PUCO’s exclusive power to license tow truck operators. *See* O.A.C. 4901:2-21. That is, Ordinance 677A.11 purports to be a requirement imposed upon those holding a license *from the city of Cleveland* to operate a tow truck. (“No person licensed under Section 677A.02 . . . shall . . .”); *see also* CCO 677A.02 (prohibiting tow truck operation without a *city* license); CCO 677A.22 (procedures for revoking *city* tow-truck license). Cleveland’s parallel licensing scheme—including Ordinance 677A.11—is not a law “[c]onsistent with” PUCO regulations. R.C. 4905.81(G). Ordinance 677A.11 is invalid because it conflicts with PUCO’s licensing scheme for tow trucks. And that is true whether R.C. 4921.25 or 4905.81(G) is the measuring stick for the conflict.

Cleveland’s aim of striking R.C. 4921.25, thus leaving only R.C. 4905.81(G), makes no difference for local laws. Local regulations—like Ordinance 677A.11—conflict with PUCO’s statewide regulatory scheme for tow trucks (which PUCO would regulate even without R.C.

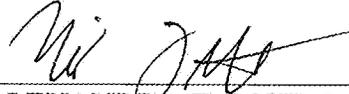
4921.25), and therefore fail even the conflict test that Cleveland approves. Cleveland's inability to show how the analysis differs under R.C. 4921.25 and 4905.81(G) underscores the weakness of its entire theory because we should view skeptically any thesis that has no real-world consequence.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment below.

Respectfully submitted,

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