

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

City of Columbus, et al.	:	
	:	CASE NO. 24CV2865
Plaintiffs,	:	
	:	JUDGE SERROTT
vs.	:	
	:	
State of Ohio, et al.,	:	
	:	
Defendant.	:	

**ORDER GRANTING MOTION OF PLAINTIFFS FOR
TEMPORARY RESTRAINING ORDER**

This matter is before the Court on the Motion of Plaintiffs for Temporary Restraining Order (the “Motion”) seeking a temporary restraining order against R.C. § 9.681 going into effect on April 23, 2024.

For the reasons set forth herein, this Court **GRANTS** the Temporary Restraining Order. The legal findings herein are for the purposes of the Temporary Restraining Order and in no way foreclose the Court in making different findings in the future. These findings do not foreclose the parties from making additional legal arguments for other findings. The Court makes the following findings based upon the Motion and supporting Affidavits, Defendant’s Memorandum in Opposition and the arguments and testimony presented to the Court at the hearing held on April 19, 2024.

The Court reviewed the following factors in reaching its determination: “(1) the likelihood or probability of a plaintiff’s success on the merits; (2) whether the issuance of the injunction will prevent irreparable harm to the plaintiff; (3) what injury to others will be caused by the granting of the injunction; and (4) whether the public interest will be served by the granting of the injunction.” *Corbett v. Ohio Bldg. Auth.*, 86 Ohio App.3d 44, 49, 619 N.E.2d 1145 (10th Dist.1993). “The grant or denial of an injunction is solely within the trial court’s discretion and,

therefore, a reviewing court should not disturb the judgment of the trial court absent a showing of a clear abuse of discretion.” *Garono v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496 (1988).

First, this Court considered the likelihood or probability of success on the merits. Plaintiffs’ challenge R.C. § 9.681 as violative of the Home Rule amendment of the State Constitution. “A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.” *City of Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 9. Thus, in determining whether the ordinances promulgated by municipal Plaintiffs are valid and enforceable, this Court must evaluate the laws in question in the *Canton* framework.

As part of this evaluation, this Court must analyze whether R.C. § 9.681 is a “general law.” To determine whether a statute is a general law, 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.” *City of Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 21.

Upon review of the pleadings and arguments presented at the hearing, this Court finds that Plaintiffs do have a substantial likelihood of success on the merits. At this juncture, many aspects of the ordinances appear to be in conflict with R.C. § 9.681, thus fulfilling the first prong of the *Canton* test. According to arguments heard at the hearing, Defendants represented that *any* municipal regulations dealing with tobacco or alternative nicotine products in any aspect would be in conflict of the statute. The second prong is similarly apparent, as the ordinances are clearly

exercises of the municipalities police power. However, the third prong, whether the statute is a general law, remains questionable and weighs in Plaintiff's favor. Specifically, R.C. § 9.681 appears to be mainly for the purpose of limiting the municipalities from setting forth regulations. Additionally, R.C. § 9.681 does not proscribe any conduct upon citizens but is specifically focused on stopping municipalities from regulating tobacco. Therefore, this Court is satisfied that Plaintiffs have a significant likelihood of success on the merits.

The Court now turns to the second factor as to whether the issuance of the injunction will prevent irreparable harm to Plaintiffs. Plaintiffs contend that the injunction is necessary to maintain the status quo and keep the local regulation of tobacco in place. Defendants argue that no harm will occur, as the underlying framework for selling tobacco – including the age of purchasing tobacco – will remain intact. On this factor, the Court believes that a violation of the Constitutional Right of Home Rule is irreparable harm. Additionally, the absence of municipal regulations would lead to harmful outcomes for the public and granting this Order maintains the status quo.

Third, this Court will look at what injury to others will be caused by the granting of the injunction. Plaintiffs contend that as the municipal regulations have been in place, or anticipated, for several years there is really no risk of harm to others by the granting of the injunction. Defendants argue that business owners will be burdened with trying to sift through the various regulations of the different municipalities. The Court is not persuaded by Defendants contention and finds that granting the injunction would maintain the status quo and would not bring any injury to third parties.

Finally, the public interest will be served by the granting of the injunction. Revised Code § 3701.84 sets a policy to address the public health crisis of youth tobacco and alternative nicotine products usage and its harmful effects. Municipalities attempting to solve local issues with local

solutions is the hallmark of a democratic republic and Home Rule. It is in the public interest to have the government take actions to protect the health and welfare of its citizens, which is the purpose of the municipal ordinances in this case.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants, including its members, agents, servants, employees, and any other individual or entity within their control or under their supervision, and all other persons or entities acting in concert with them or on their behalf by contract or otherwise, are hereby enjoined from enforcing R.C. § 9.681 against named Plaintiffs only.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court retains jurisdiction to enforce the terms of this Order.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Order shall be effective immediately. No bond required.

This Order shall be effective through **May 17, 2024**.

This matter is scheduled for **Preliminary Injunction Hearing on May 17, 2024, at 9:00 AM**. If the parties agree to an extension of the order and an alternative hearing date, they shall notify the Court as soon as practicable.

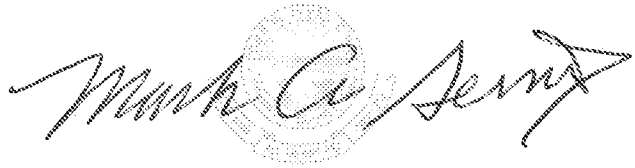
IT IS SO ORDERED.

SIGNATURE PAGE ATTACHED
JUDGE MARK A. SERROTT

Franklin County Court of Common Pleas

Date: 04-19-2024
Case Title: CITY OF COLUMBUS ET AL -VS- STATE OF OHIO ET AL
Case Number: 24CV002865
Type: ORDER

It Is So Ordered.

A handwritten signature in black ink, reading "Mark A. Serrott", is written over a circular official seal. The seal is faint and appears to be a watermark or a light ink stamp. The signature is fluid and cursive.

/s/ Judge Mark A. Serrott

Court Disposition

Case Number: 24CV002865

Case Style: CITY OF COLUMBUS ET AL -VS- STATE OF OHIO ET
AL

Motion Tie Off Information:

1. Motion CMS Document Id: 24CV0028652024-04-0999240000
Document Title: 04-09-2024-MOTION FOR PRELIMINARY
INJUNCTION - PLAINTIFF: CITY OF COLUMBUS
Disposition: MOTION GRANTED