



# COURT FIGHT CONTINUES OVER CLEVELAND TRANS FAT ORDINANCE

by  
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Some local governments have enacted regulations targeting the preparation and service of “unhealthy food.” In response, several states have passed laws seeking to prevent a statewide patchwork of food and nutrition regulations. In *City of Cleveland v. State of Ohio*, Case No. CV-12-772529 (Ohio Ct. Comm. Pleas June 11, 2012), Cleveland successfully challenged the state of Ohio’s attempt to maintain consistent statewide regulations.

In April 2011, the Cleveland City Council enacted Ordinance 241.42 to ban the preparation and service of food containing trans fat. A short time later, the Ohio General Assembly amended its regulatory scheme to, among other things, clarify the Department of Agriculture’s authority over food regulations and to provide that local governments shall not “[b]an, prohibit, or otherwise restrict food at food service operations based on the food nutrition information . . .” O.R.C. § 3717.53. Cleveland promptly sued the state and secured a court order declaring the statute unconstitutional. Because the trial court did not issue an opinion, we can only speculate as to the court’s rationale by reviewing the parties’ arguments and background caselaw.

First, Cleveland argued that the statute violated Ohio’s Home-Rule Amendment. Ohio, like a slight majority of states, is a home-rule state that permits its local governments to enact police power regulations. See *Northern Ohio Patrolmen’s Benevolent Ass’n v. Parma*, 61 Ohio St. 2d 375, 379 n.1 (Ohio 1980) (“The purpose of the Home Rule amendments was to put the conduct of municipal affairs in the hands of those who knew the needs of the community best.”).<sup>1</sup> The Home-Rule Amendment provides that that, “[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 Const. Art. XVIII, § 3. Under this Amendment, in order to preempt a local law, the General Assembly must pass a “general law” conflicting with the local law. See *Amer. Fins. Servs. Ass’n v. Cleveland*, 112 Ohio St. 3d 170, 175 (2006) (“A statement by the General Assembly of its intent to preempt a field of legislation . . . does not trump the constitutional authority of municipalities to enact legislation pursuant to the Home Rule Amendment, provided that the local legislation is not in conflict with general laws.”).

In support of its home-rule challenge, Cleveland argued—and the trial court agreed—that O.R.C. § 3717.53 did not constitute a “general law.” In *Canton v. State of Ohio*, 95 Ohio St. 3d 149, 153 (Ohio 2002), the Ohio Supreme Court held that a general law must:

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<sup>1</sup> In contrast, local governments in other states require explicit permission from the state legislature in order to enact a regulation or law. See *West Jefferson v. Robinson*, 1 Ohio St. 2d 113, 115 (Ohio 1965).

(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 to grant or limit legislative power of a municipal corporation to set forth police sanity, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

The parties focused their arguments on how the *Canton* test should be applied. Cleveland argued that, when classifying the legislation, the court ought to apply the *Canton* test narrowly, evaluating only the amended language of O.R.C. § 3717.53. In opposition, Ohio argued that the court should not apply the *Canton* test to the amendments in a vacuum, but rather, in the context of the rest of the statute, Chapter 37 of the Revised Code, and relevant state regulations. See, e.g., *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 39 (Ohio 2008) (“[A]ll sections of a chapter must be read *in pari material*.”); *Ohio Ass’n of Private Detective Agencies, Inc. v. North Olmsted*, 65 Ohio St. 3d 242, 245 (Ohio 1992) (A statute must not be “[c]onsidered in isolation [otherwise] such a provision may fail to qualify as a general law because it prohibits a municipality from exercising a police power while not providing for uniform statewide regulation of the same subject matter.”).

This distinction makes a tremendous difference. For example, Ohio argued that O.R.C. § 3717.53 passed the *Canton* test’s first prong because it is one part of a comprehensive legislative scheme of regulations for restaurants and other food service operations. Cleveland countered that O.R.C. § 3717.53 failed the first prong because it regulated only “food nutrition information” and, as the lone statute regulating “food nutrition information,” it could not constitute a comprehensive regulatory scheme on the subject.

In addition to its home-rule challenge, Cleveland also argued that O.R.C. § 3717.53 violates the One-Subject Rule, which provides that “no bill shall contain more than one subject, which shall be clearly expressed in its title.” Ohio Const., Art. II, § 15(D). The purpose of this rule is to prevent the “logrolling” of several disparate statutes or provisions that, standing alone, would not garner enough votes for passage. See *State ex rel Ohio Civil Serv. Emps. Ass’n v. State Emp. Relations Bd.*, 104 Ohio St. 3d 122, 129 (Ohio 2004). In the past, this rule has had more bark than bite: The Ohio Supreme Court has held that only a “manifestly gross and fraudulent violation of the one-subject provision” will suffice to invalidate a statute. *State v. Bloomer*, 122 Ohio St. 3d 200, 210 (Ohio 2009).

Contending that Am. Sub. House Bill 153 contained more than one subject, Cleveland argued—and the trial court agreed—that the amendments to O.R.C. § 3717.53 should not have been included in the bill. Both parties acknowledged that, as an appropriations bill, Am. Sub. House Bill 153 naturally contains “a multiplicity of items united by the common subject of appropriations for the operation of governmental services in the state of Ohio.” *State ex rel. Ohio Roundtable v. Taft*, No. 02AP-911, 2003 Ohio 3340, ¶48 (Ohio Ct. App. June 26, 2003). But as with the home-rule issue, the decisive factor appears to have been the extent to which the court considered the amendments’ context. Ohio argued that the amendments should be analyzed within the broader context of Am. Sub. House Bill 153 because the purpose of the appropriations bill was not only to raise and allocate revenue, but also to expand or contract the authority of state agencies. Because the amendments clarify and expand the duties of the Department of Agriculture, thereby determining how the appropriations would be expended, Ohio argued that the amendments are naturally connected to appropriations. Cleveland, on the other hand, asserted that the amendments were wholly unrelated to appropriations because they were inserted into Am. Sub. House Bill 153 separately from and well after the Department of Agriculture’s budget was inserted into the bill.

The case is currently before the Eighth District Court of Appeals and the food industry will want to pay close attention as the case progresses. If *Cleveland v. Ohio* is affirmed, Ohio could soon have a patchwork of regulations governing the selling of food that contains trans fat. Moreover, if other local governments follow Cleveland’s lead, the case may well influence judicial decisions in other home-rule states.