

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CITY OF CLEVELAND
601 Lakeside Avenue, Rm. 106
Cleveland, OH 44114-1077

Plaintiff,

vs.

THE STATE OF OHIO
c/o Michael DeWine
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, OH 43215-3428

Defendant.

) CASE NO.:

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) JUDGE:

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**COMPLAINT FOR DECLARATORY
JUDGMENT AND FOR INJUNCTIVE
RELIEF**

For its Complaint for Declaratory Judgment Plaintiff the City of Cleveland (“City”) states as follows:

1. This is an action seeking declaratory judgment, a temporary restraining order, and injunctive relief with respect to the unconstitutionality of the amendments to R.C. Chapter 4939 accomplished with the enactment of Substitute S.B. No. 331 of the 131st General Assembly. Substitute S.B. No. 331 was subsequently signed by the Governor of Ohio, with the amendments to R.C. Chapter 4939 included therein having a presumptive effective date of March 21, 2017.

PARTIES

2. Plaintiff City is an Ohio municipal corporation chartered under Article XVIII, Section 7 of the Ohio Constitution. The City is located in Cuyahoga County.

3. Defendant, the State of Ohio, is a state of the United States of America.

JURISDICTION

4. This is a civil action against the State that seeks declaratory relief. As such, it falls within the original jurisdiction of this Court pursuant to R.C. § 2721.03.

5. The City has standing to bring this action because it is questioning the constitutional validity of the amendments to R.C. Chapter 4939 contained in S.B. No. 331, it is affected by the amendments to R.C. Chapter 4939 contained therein, and the City has a justiciable cause of action concerning the amended law.

6. A justiciable cause exists between the parties because the amendments to R.C. Chapter 4939 contained in Substitute S.B. No. 331 as enacted improperly seek to limit the established authority of the City and other municipalities to exercise control over property owned by the City and to regulate the municipal public right of way, thereby limiting the City and other municipalities from exercising the Home Rule authority guaranteed to the City and other Ohio Municipalities by Article XVIII of the Ohio Constitution.

7. A justiciable cause also exists between the parties because the placement of the amendments to R.C. Chapter 4939 in S.B. No. 331 was accomplished in violation of Article II, Section 15 of the Ohio Constitution, which provides that “No bill shall contain more than one subject, which shall be clearly expressed in its title.”

VENUE

8. Venue of this action is proper in this Court because the City is located within Cuyahoga County.

Home Rule

9. Article XVIII, Section 3 of of the Ohio Constitution (“Home Rule Amendment”), states that:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with the general laws.”

10. The Home Rule Amendment gives municipalities the “broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a state-wide nature or interest.” *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 212, 80 N.E.2d 769 (1948).

11. Local authorities are presumed to be familiar with local conditions and to know the needs of their community. *Allion v. Toledo* (1919), 99 Ohio St. 416, syllabus.

12. The Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction. *Am. Financial Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 23 (2006)

13. The City’s authority to manage, regulate, and administer Cleveland’s public right of ways and the use of City owned and operated property within the City’s public right of ways is a power of local self-government guaranteed to the City by the Home Rule Amendment.

14. The City manages, regulates, and administers Cleveland’s public rights of way and the use of City owned property located within the public right of ways by wireless service providers and other public utilities under the authority of its Charter and Ordinances pursuant to the City’s power of local self-government.

15. The State has recognized that the City’s management, regulation, and administration of the public right of way is a power of local self-government granted to it under Ohio’s Home Rule Amendment:

“The management, regulation, and administration of a public way by a municipal corporation with regard to matters of local concern shall be presumed to be a valid exercise of the power of local self-government granted by Section 3 of Article XVIII of the Ohio Constitution.” R.C. Section 4939.04(B).

S.B. No. 331

16. S.B. No. 331 was introduced in the Ohio Senate (“Senate”) on May 17, 2016. S.B. No. 331 as introduced singularly addressed provisions in R.C. Chapter 956 concerning the retail sale of dogs from pet stores and dog retailers, with the legislation being commonly referred to as the “Petland” bill.

17. S.B. No. 331 passed the Senate on or about May 25, 2016, and proceeded to the Ohio House of Representatives (“House”) on May 31, 2016. After passing the Senate in May and following the November 8, 2016, general election, S.B. 331 was first referred to the House Finance Committee for committee hearing on November 10, 2016.

18. During the “lame duck” session of the 131st General Assembly that followed the general election in November 2016 a series of amendments unrelated to the retail sale of dogs were inserted or “logrolled” into the Senate’s “Petland” bill by the House Finance Committee.

19. The unrelated “logrolled” amendments adopted in the House Finance Committee included:

A. Amendments to R.C. Chapter 959 to broaden the activities criminalized in relation to cockfighting, bearbaiting, and animal fighting and to make certain of those activities felonies, and to criminalize sexual conduct with animals;

B. An amendment to R.C. Chapter 4111 that purports to prohibit political subdivisions from establishing a minimum wage rate different from that established pursuant to R.C. 4111.02;

C. Amendments to R.C. Chapter 4113 generally providing private employers with exclusive authority to establish policies regarding hours and work location, schedules, and benefits; and

D. Amendments to R.C. Chapter 4939, regarding the placement of micro wireless facilities in the public rights of way of municipal corporations.

20. S.B. No. 331 as amended by the House Finance Committee was re-designated as Substitute Senate Bill No. 331 on December 7, 2016.

21. Substitute S.B. No. 331 was thereafter passed by the House on December 7, 2016.

22. On December 7, 2016, the Senate concurred in Substitute S.B. No. 331 passed by the House.

23. Substitute S.B. No. 331 was signed into law by Governor Kasich on December 19, 2016.

A copy of Substitute S.B. No. 331 as enacted is attached hereto as Exhibit A.

24. Substitute S.B. No. 331 as enacted combines numerous unrelated topics. The amendments to Chapter 4939 addressing purported limitations on municipal authority to manage, regulate, and administer the placement of micro wireless facilities in the public right of way share no common purpose or relationship with those other provisions in the bill addressing retail dog sales, cockfighting, bearbaiting and other animal fighting, the criminalization of sex with animals, Ohio's minimum wage in Ohio, and private employer-employee work related issues.

25. The various unrelated subjects addressed and included by the Ohio General Assembly in Substitute S.B. 331 were combined, or "logrolled," with limited opportunity for discussion and review, to ensure passage in the last days of the 2016 "lame duck" legislative session.

Substitute S.B. No. 331's Micro Wireless Facility Provisions

26. The provisions of Substitute S.B. No. 331 placed at issue by the City with this litigation are the amendments to R.C. Chapter 4939 enacted with the bill signed by Governor Kasich. The introduction to Substitute S.B. No. 331 provides in part that these amendments are "to govern construction and attachment activities related to micro wireless facilities in the public way."

27. The amendments to R.C. Chapter 4939 in Substitute S.B. No. 331 include new definitions in R.C. 4939.01 that relate to micro wireless facilities, which are defined at new R.C. 4939.01(F)

to include “both a distributed antenna system and a small cell facility, and the related wireless facilities.” R.C. 4939.01(G) defines “micro wireless facility operator” to mean “a public utility or cable operator that operates a micro wireless facility.” New R.C. 4939.01(P) defines “wireless facility” to mean “an antenna, accessory equipment, and other wireless device or equipment used to provide wireless service.” New R.C. 4939.01(R) defines “wireless support structure” to mean “a pole, such as a monopole, either guyed or self-supporting, light pole, traffic signal, sign pole, or utility pole capable of supporting wireless facilities. As used in section 4939.031 of the Revised Code, ‘wireless support structure’ excludes a utility pole or other facility owned or operated by a municipal electric utility.” (All definitions in R.C. 4939.01 are contained in the enacted version of Substitute S.B. 331 attached as Exhibit A).

28. Substantive amendments and newly enacted provisions included in Substitute S.B. No. 331 include:

A. Newly added R.C. 4939.032 authorizes micro wireless facility operators to construct and operate small cell or wireless facilities in a municipal corporation’s public right of way, subject to the provisions of Chapter 4939. R.C. 4939.01(N) provides that wireless equipment associated with a small cell facility can be up to “twenty-eight cubic feet in volume.”

B. R.C. 4939.02(C)(4) is amended to require that any denial of consent by a municipality must be supported by substantial, competent evidence.

C. Newly added R.C. 4939.031 sets forth the permitting process for micro wireless facilities and requires a municipal corporation to grant or deny consent for such a permit within 90 days of receiving an application to place in a municipality’s public right of way any of the following:

(1) Attaching a micro wireless facility to a wireless support structure;

- (2) Locating two or more wireless service providers' micro wireless facilities on the same wireless support structure;
- (3) Replacing or modifying a micro wireless facility on a wireless support structure; and
- (4) Constructing, modifying, or replacing a wireless support structure associated with a micro wireless facility.

29. R.C. 4939.031(B) prohibits a municipal corporation from requiring any zoning or other approval, consent, permit, certificate, or condition for the attachment, location, replacement, construction, or operation of a micro wireless facility, or from imposing other prohibitions or restrictions on micro wireless facility activities in a municipality's public right of way.

30. Newly added R.C. 4939.033 provides that a request for consent under Section 4939.031 shall be deemed a permitted use and exempt from zoning review.

31. Under newly added R.C. 4939.05, the 90 days set forth in 4939.031 may be tolled by mutual agreement between the entity requesting consent and the municipal corporation when (a) the municipal corporation determines that the application for consent is incomplete; or (b) when the municipal corporation has an extraordinary number of pending consent requests. For the time period to be tolled for the incompleteness of an application, the municipal corporation is required to give notice that the application is incomplete within 30 days of receiving it, with the notice "clearly and specifically" delineating all missing documents or information, which must be reasonably related to determining whether the request meets the requirement of applicable state and federal law.

32. Newly added R.C. 4939.037 provides that, if a municipality fails to grant or deny consent within 90 days of an application, the application is deemed granted upon the requesting entity giving notice to a municipal corporation that the time has lapsed.

33. Newly added Section 4939.038 provides that nothing in Chapter 4939 precludes a municipal corporation from applying its generally applicable health, safety and welfare regulations when granting consent for a micro wireless facility.
34. The language in Section 4939.038 is meaningless in light of the specific limitations placed on the authority of a municipal corporation identified in the language of R.C. Chapter 4939 as amended in Substitute S.B. 331.
35. Newly added R.C. 4939.039 specifies that a municipal corporation must approve an “eligible facilities request” (a request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station) within 60 days and may not deny such a request.
36. Newly added R.C. 4939.0311 specifies that no consent from a municipality is required for routine maintenance of wireless facilities or for the replacement of wireless facilities with wireless facilities that are substantially similar to the existing wireless facilities or that are the same size or smaller than the existing wireless facilities.
37. Newly added R.C. 4939.0319 limits the fee that a municipal corporation may charge for a micro wireless facility consent request under R.C. 4939.031(A) to the lesser of \$250 per micro wireless facility or the amount charged by the municipal corporation for a building permit for any other type of commercial development or land use development.
38. Newly added R.C. 4939.0315 attempts to limit the local self-government power of the City and other municipal corporations with respect to micro wireless facilities by prohibiting a municipal corporation from:
- A. requiring information about, or evaluating a requestor’s business decisions, the requestor’s service, quality of service, or customer demand (4939.0315(A));

- B. requiring information regarding the need for the micro wireless facility or associated wireless support structure, including additional wireless capacity or increased speeds (4939.0315(B));
- C. requiring the requestor to justify the need for a new micro wireless facility or wireless support structure, or to submit business information including strategy documents (4939.0315(C));
- D. evaluating a request based upon the availability of other potential locations for a micro wireless facility or wireless support structure, except that a municipal corporation may propose an alternate location within 50 feet of the proposed location (4939.0315(D));
- E. requiring the removal of existing wireless facilities as a condition of granting a request (4939.0315(E));
- F. requiring bonds or other security unless similar to those required of other occupants of the public way (4939.0315(G));
- G. imposing unreasonable requirements about the appearance or maintenance of a micro wireless facility, including the types of materials to be used and the screening or landscaping of wireless facilities (4939.0315(I));
- H. requiring that a requestor purchase, lease, or use facilities, networks or services owned or operated by the municipal corporation or by any entity in which the municipal corporation has an “economic governance interest.” (4939.0315(J));
- I. conditioning the grant of a permit on the requestor’s agreement to permit other wireless facilities to be placed at the associated wireless support structure (4939.0315(K));
- J. imposing any limit on the duration of a permit, except that it may require that construction commence within two years (4939.0315(L));
- K. imposing setback or fall-zone requirements on wireless support structures that are different from those imposed on other types of structures in the public way (4939.0315(M));
- L. imposing any environmental testing, sampling, or monitoring that exceeds that required by federal law or not imposed on other types of construction (4939.0315(N));
- M. imposing any regulations relating to radio frequency emissions that are contrary to or exceed FCC rules (4939.0315(O));

N. imposing any separation requirements that require space to be maintained between wireless facilities or wireless support structures (4939.0315(P));

O. preventing a requestor from locating a micro wireless facility in a residential area or a specific distance from a residence or other structure (4939.0315(Q)).

39. Newly added R.C. 4939.317 provides that no municipal corporation may institute a moratorium on the filing, acceptance of filings, consideration, or approval of requests for consent for micro wireless facilities activities.

40. Newly added R.C. 4939.0321 provides that no municipal corporation may have or exercise any jurisdiction, authority, or control over the design, engineering, construction, installation, or operation of any micro wireless facility located in an interior structure not owned or controlled by the municipal corporation.

41. Newly added R.C. 4939.0325 requires a municipal corporation to permit, for the purpose of providing wireless service, an “attachment” by a micro wireless facility operator to a wireless support structure owned or operated by the municipal corporation and located in the public way. The total annual charges and fees of a municipal corporation for a micro wireless facilities attachment must be the lesser of \$200 per attachment or the actual, direct, and reasonable costs related to the use of the wireless support structure by the micro wireless facility operator.

42. R.C. Chapter 4939 does not define the “attachment” referenced in R.C. 4939.0325 that the municipal corporation is required to permit.

43. Newly added R.C. 4939.0327 prohibits a municipal corporation from entering into an exclusive agreement with any entity for the right to attach to the municipal corporation’s wireless support structures.

44. Newly added R.C. 4939.08(A)(1)(b) does not apply to an agreement that was entered into between a municipal corporation and a micro wireless facility operator prior to the effective date

of Substitute S.B. No. 331. R.C. 4939.08(B)(2) provides that the “grandfather” clause for pre-September 29, 1999 public way ordinances that is found in R.C. 4939.08(B)(1) does not apply to micro wireless facility operators and their facilities.

Unconstitutional Effect of Substitute S.B. 331

45. The effect of the Micro Wireless Facility Provisions in Substitute S.B. No. 331 is to unconstitutionally preempt, eliminate or severely restrict the ability of the City and other municipalities to effectively govern, manage, and control both the use of municipally owned property and the access to public rights of way by public utilities.

46. It is imperative that municipalities be able to manage, regulate, and administer the use of municipally owned property and otherwise determine when and where utility providers install their small cell and wireless facilities and wireless support structures and other attachments and infrastructure in the public right of way. The City’s exercise of its local self-government authority in this regard is necessary to minimize street closures, disruptions to the rights of way, and the potential damage to streets and other municipal property, while also enabling the City to effectively keep track of wireless companies that have installed and maintain wireless facilities equipment, and ensuring control of the public right of way where such installation has taken place.

FIRST CLAIM FOR RELIEF

The General Assembly’s amendments to RC Chapter 4939 in Substitute S.B. No. 331 were adopted in violation of the one subject rule Established at Section 15, Article II of the Ohio Constitution.

47. The City incorporates paragraphs 1- 46 by reference as if fully rewritten herein.

48. Section 15, Article II of the Ohio Constitution expressly provides:

No bill shall contain more than one subject, which shall be clearly expressed in its title. No law shall be revived or amended unless the new act contains the entire

act revived, or the section or sections amended, and the section or sections amended shall be repealed.

49. The title of S.B. No. 331 as introduced was “Regulate dog sales and license pet stores.” The General Assembly’s “log rolling” and inclusion of amendments to R.C. Chapter 4939 along with the other subjects addressed in Substitute S.B. No. 331 are unrelated to any common legislative purpose as enacted.
50. There is a blatant disunity between the micro wireless facilities regulatory provisions and amendments to R.C. Chapter 4939 contained in Substitute S.B. No. 331 and the other multiple subjects contained in the bill as enacted, which include the regulation and licensing requirements associated with retail dog sales, prohibitions and penalties related to cockfighting, bearbaiting and other animal fighting, the criminalization of sex with animals, prohibitions on political subdivisions concerning Ohio’s minimum wage, and the granting of exclusive authority to private employers concerning certain employee work related issues.
51. The amendments to R.C. Chapter 4939 included in Substitute S.B. 331 were adopted in violation of Section 15, Article II of the Ohio Constitution and are unconstitutional.

SECOND CLAIM FOR RELIEF

The General Assembly’s amendments to R.C. Chapter 4939 in Substitute S.B. 331 unconstitutionally seek to infringe and preempt the City’s powers of local self-government bestowed on the City and other municipalities by Article XVIII, Section 3 of the Ohio Constitution.

52. The City incorporates paragraphs 1 through 51 by reference as if fully rewritten herein.
53. Section 3, Article XVIII of the Ohio Constitution, Ohio’s Home Rule Amendment, establishes that the City and other municipalities “shall have authority to exercise all powers of local self-government...”

54. The power of the City and other municipalities to manage, regulate and administer the access to public rights of way and City owned property located therein is a power of local self-government established and guaranteed to the City by Ohio's Home Rule Amendment.

55. The amendments to R.C. Chapter 4939 contained in Substitute S.B. No. 331 improperly seek to infringe and preempt the rights of the City and other municipalities to exercise the powers of local self-government established and guaranteed to the municipalities by Ohio's Home Rule Amendment.

56. The amendments to R.C. Chapter 4939 enacted with Substitute S.B. No. 331 are unconstitutional and violate the recognized home rule authority bestowed on the City and other municipalities by Article XVIII, Section 3 of the Ohio Constitution.

THIRD CLAIM FOR RELIEF

The General Assembly's amendments to R.C. Chapter 4939 in Substitute S.B. No. 331 do not constitute a general law and enforcement against the City and other municipalities would be unconstitutional and in violation of Article XVIII, Section 3 of the Ohio Constitution.

57. The City incorporates paragraphs 1 through 56 by reference as if fully rewritten herein.

58. Under Article XVIII, Section 3 of the Ohio Constitution the City and other Ohio municipalities are authorized to exercise local police power concurrent with the State of Ohio and are expressly granted the right to adopt and enforce local police regulations that are not in conflict with a general law of the State.

59. To be a general law, "a 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 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 v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (syllabus).

60. The amendments to R.C. Chapter 4939 in Substitute S.B. 331 do not constitute a general law for purposes of Article XVIII, § 3 of the Ohio Constitution as the amendments apply only to municipalities and do not apply to all areas and parts of the state alike.

61. The amendments to R.C. Chapter 4939 in S.B. 331 do not constitute a general law for purposes of Article XVIII, § 3 of the Ohio Constitution as the amendments do not operate uniformly throughout the state.

62. The amendments to R.C. Chapter 4939 in S.B. 331 do not constitute a general law for purposes of Article XVIII, § 3 of the Ohio Constitution as the amendments attempt to limit the legislative power of the City and other municipalities to set forth police, sanitary, or similar regulations for the purpose of managing, regulating, and administering the municipal public right of way and the use of municipal owned property located in the public right of way.

63. The amendments to R.C. Chapter 4939 in S.B. 331 do not constitute a general law for purposes of Article XVIII, § 3 of the Ohio Constitution, as the amendments do not prescribe a rule of conduct upon citizens generally.

64. The amendments to R.C. Chapter 4939 in S.B. 331 are not part of a statewide and comprehensive legislative enactment.

65. The amendments to R.C. Chapter 4939 in S.B. 331 do not constitute a general law for purposes of Section 3, Article XVIII of the Ohio Constitution and represent an attempted unconstitutional limitation and restriction on the recognized home rule authority bestowed on the City and other municipalities by Article XVIII, Section 3 of the Ohio Constitution.

FOURTH CLAIM FOR RELIEF

Unconstitutional Taking Without Just Compensation

66. The City incorporates paragraphs 1 through 65 by reference as if fully rewritten herein.

67. The City's ownership of the rights of way, including streets, alleys, and other public thoroughfares located in the public right of way is in trust for the use of their citizens and the general public.

68. As the steward of the use of the City's public right of way, the City has the right and responsibility to exercise its home rule powers to manage, regulate, and administer the use of the public rights of way located within the City's boundaries.

69. The amendments to R.C. Chapter 4939 in S.B. 331 contained in Substitute S.B. 331 authorizing commercial micro wireless facility operators to occupy the City's public rights of way and City owned structures without the City's authorization and without fully compensating for the costs incurred by the City affect a taking of the City's property without the payment of just compensation as required by Article I, Section 19 of the Ohio Constitution.

70. Because the amendments to R.C. Chapter 4939 contained in Substitute S.B. 331 effect a taking of property without providing for the payment of just compensation or otherwise complying with the condemnation procedures established by the Ohio Constitution and the Ohio Revised Code, those provisions are unconstitutional and unenforceable.

FIFTH CLAIM FOR RELIEF

Unconstitutional Taking of City Owned Property Without Just Compensation

71. The City incorporates paragraphs 1 through 70 by reference as if fully rewritten herein.

72. New R.C. Section 4939.01(R) defines in pertinent part "Wireless support structure" as "a pole, such as a monopole, either guyed or self-supporting, light pole, traffic signal, sign pole, or utility pole capable of supporting wireless facilities."

73. The statutory definition of wireless support structure refers to poles, light poles, traffic signals, sign poles, and utility poles that are owned by the City or other municipal corporations.

74. New R.C. Section 4939.01(G) defines “micro wireless facility operator” as a “public utility or cable operator that operates a micro wireless facility.”

75. New R.C. 4939.01(P) defines “wireless facility” as “an antenna, accessory equipment, or other wireless device or equipment used to provide wireless service.”

76. Newly added R.C. 4939.0325 would require the City to permit the attachment of antennas, accessory equipment, and other wireless devices and equipment by a public utility or cable operator to City owned or operated poles, light poles, traffic signals, sign poles, and utility poles located in the public right of way.

77. Newly added R.C. 4939.0325 further limits total annual charges and fees that can be charged by the City for any such attachments to City owned wireless support structures to the lesser of \$200 per attachment or the actual, direct, and reasonable costs related to the use of the wireless support structure by the micro wireless facility operator.

78. The amendments to R.C. Chapter 4939 contained in Substitute S.B. 331 do not limit the number of “micro wireless facility operators” that would be authorized to attach their antennas, accessory equipment, or other wireless device or equipment to City owned poles, light poles, traffic signals, sign poles, and utility poles located in the public right of way property.

79. The amendments to R.C. Chapter 4939 contained in Substitute S.B. 331 requiring the City make available its property to public utilities and cable operators without reasonable compensation affect a taking of the City’s property under Article I, Section 19 of the Ohio Constitution.

80. The amendments to R.C. Chapter 4939 contained in Substitute S.B. 331 are unconstitutional and unenforceable by virtue of authorizing and allowing for the taking of City property by public utilities and cable operators without providing for the payment of just compensation to the City.

SIXTH CLAIM FOR RELIEF

Violation of Article II, Section 26 of the Ohio Constitution, Ohio's Uniformity Clause.

81. The City incorporates paragraphs 1 through 80 by reference as if fully rewritten herein.

82. Article II, Section 26 of the Ohio Constitution provides as follows:

All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.

83. The amendments to R.C. Chapter 4939 contained in Substitute S.B. 331 do not have a uniform operation throughout the State of Ohio. These amendments apply only to municipal corporations such as the City and other municipalities, but not to other political subdivisions such as counties or townships.

84. Whereas other provisions contained in Substitute S.B. 331 regarding dog sales, sex with animals, minimum wage laws, and private employer-employee work conditions apply to all political subdivisions, amended R.C. Chapter 4939 provisions apply only to municipal corporations.

85. The result of this disparate treatment is that the amendments to R.C. Chapter 4939 contained in Substitute S.B. No. 331 will not result in uniform application throughout the state, in that municipal corporations are subject to its purported restrictions, whereas counties and townships are not.

86. The disparate treatment accorded to municipalities compared with other political subdivisions based upon their status as a municipal corporation is arbitrary, unreasonable, and capricious.

87. The amendments to R.C. Chapter 4939 contained in Substitute S.B. 331 are unconstitutional and in violation of Section 26, Article II of the Ohio Constitution.

SEVENTH CLAIM FOR RELIEF

Preliminary and Permanent Injunction

88. The City incorporates paragraphs 1 through 87 by reference as if fully rewritten herein.

89. The State's violation of the Ohio Constitution in seeking to deprive the City of its established Home Rule Authority is evident and the City has a substantial likelihood of success on the merits of its claim.

90. The City and its residents will suffer irreparable harm in the absence of injunctive relief through the deprivation of its Home Rule Authority and the negative effect of the State's law on the City's ability to manage, regulate and administer the public right of way and the use of the City's publicly owned property on behalf of the residents of Cleveland for which there can be no compensatory relief through monetary damages.

91. The purpose of the City's request for preliminary and permanent injunction is to preserve the status quo in this matter pending final adjudication of the declaratory judgment action presented questioning the constitutionality of the amendments to R.C. Chapter 4939 in S.B. 331.

92. The public interest will be served through issuance of an order of preliminary and permanent injunction by preserving the legal relationship between the State and the City as established by the Ohio Constitution during the pendency of this litigation.

PRAYER FOR RELIEF

Wherefore, the City demands:

A. On its First Claim for Relief a declaration that the amendments to R.C. Chapter 4939 contained in Substitute S.B. 331 are unconstitutional as such provisions were enacted in violation of the single subject rule established in Section 15, Article II of the Ohio Constitution.

B. On its Second Claim for Relief a declaration that the amendments to R.C. Chapter 4939 contained in Substitute S.B. 331 are unconstitutional as such provisions seek to unconstitutionally deprive the City of its powers of local self-government established in Section 3, Article XVIII of the Ohio Constitution.

C. On its Third Claim for Relief a declaration that the amendments to R.C. Chapter 4939 contained in Substitute S.B. 331 are unconstitutional as such provisions are not a General Law, and that any attempt to enforce the provisions would be in violation of Section 3, Article XVIII of the Ohio Constitution.

D. On its Fourth and Fifth Claims for Relief a declaration that the amendments to R.C. Chapter 4939 contained in Substitute S.B. 331 are unconstitutional as such provisions effect a taking of the City's property without the payment of just compensation as required by Article I, Section 19 of the Ohio Constitution.

E. On its Sixth Claim for Relief a declaration that the amendments to R.C. Chapter 4939 contained in Substitute S.B. 331 are unconstitutional as such provisions do not have a uniform operation throughout the State of Ohio as required by Section 26, Article II of the Ohio Constitution.

F. On its Seventh Claim for Relief an order that the State of Ohio is preliminarily and permanently enjoined from enforcing the amendments to R.C. Chapter 4939 contained in Substitute S.B. 331.

G. For such other relief as the Court deems appropriate and proper.

Respectfully submitted,

BARBARA A. LANGHENRY (0038838)
Director of Law, City of Cleveland

By: Gary S. Singletary

GARY S. SINGLETARY (0037329)
Chief Counsel

CHRISTOPHER HELTZEL (0092961)
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Counsel for Plaintiff City of Cleveland

INSTRUCTIONS FOR SERVICE

To the Clerk:

Please serve a copy of the foregoing Complaint upon the Defendant State of Ohio c/o the Ohio Attorney General at the address listed for the Defendant State of Ohio in the case caption of the Complaint by certified mail, return receipt requested.

Respectfully submitted,

BARBARA A. LANGHENRY (0038838)
Director of Law, City of Cleveland

By: Gary S. Singletary
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