

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

CITY OF HUDSON, OHIO)
115 Executive Parkway, #400)
Hudson, Ohio 44236)

CASE NO:

JUDGE:

CITY OF WOOSTER, OHIO)
538 North Market Street)
Wooster, Ohio 44691)

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT,
TEMPORARY RESTRAINING ORDER,
AND INJUNCTIVE RELIEF**

CITY OF MEDINA, OHIO)
Medina City Hall)
132 North Elmwood Avenue)
Medina, Ohio 44256)

VILLAGE OF RICHFIELD, OHIO)
4410 West Streetsboro Road)
Richfield, Ohio 44286)

CITY OF RICHMOND HEIGHTS, OHIO)
26789 Highland Road)
Richmond Heights, Ohio 44143)

VILLAGE OF MORELAND HILLS,)
OHIO)
4350 SOM Center Road)
Moreland Hills, Ohio 44022)

CITY OF ROCKY RIVER, OHIO)
21012 Hilliard Boulevard)
Rocky River, Ohio 44116)

CITY OF WARRENSVILLE HEIGHTS,)
OHIO)
4301 Warrensville Center Road)
Warrensville Heights, Ohio 44128)

VILLAGE OF GATES MILLS, OHIO)
1470 Chagrin River Road)
Gates Mills, Ohio 44040)

MAYFIELD VILLAGE, OHIO)
6622 Wilson Mills Road)
Mayfield, Ohio 44143)

CITY OF OBERLIN, OHIO)
85 South Main Street)
Oberlin, Ohio 44074)

CITY OF BEREA, OHIO)
11 Berea Commons)
Berea, Ohio 44017)

CITY OF CLEVELAND HEIGHTS, OHIO)
40 Severance Circle)
Cleveland Heights, Ohio 44118)

CITY OF LAKEWOOD, OHIO)
12650 Detroit Ave.)
Lakewood, Ohio 44107)

CITY OF EUCLID, OHIO)
585 East 222nd Street)
Euclid, Ohio 44123)

VILLAGE OF CUYAHOGA HEIGHTS, OHIO)
4863 East 71st Street)
Cuyahoga Heights, Ohio 44125)

VILLAGE OF HUNTING VALLEY, OHIO)
38251 Fairmount Blvd.)
Hunting Valley, Ohio 44022)

CITY OF MAYFIELD HEIGHTS, OHIO)
6154 Mayfield Road)
Mayfield Heights, Ohio 44124)

CITY OF AVON, OHIO)
36080 Chester Road)
Avon, Ohio 44011)

CITY OF BROOKLYN, OHIO)
7619 Memphis Avenue)
Brooklyn, Ohio 44144)

)
Plaintiffs,)
)
v.)
)
)
THE STATE OF OHIO,)
c/o Attorney General Mike DeWine)
30 East Broad Street, 14 th Floor)
Columbus, Ohio 43215)

Defendant.

For its Verified Complaint for Declaratory Judgment, Temporary Restraining Order, and Injunctive Relief, Plaintiffs state as follows:

PRELIMINARY STATEMENT

1. This is an action seeking declaratory judgment, a temporary restraining order, and preliminary injunctive relief with respect to the unconstitutionality of Ohio Senate Bill 331 (“S.B. 331”), which was passed by the General Assembly on December 7, 2016, signed by the Governor of Ohio on December 19, 2016, and has an effective date of March 21, 2017.

2. This action challenges S.B. 331 because it violates Article II, Section 15(D) (“One-Subject Rule”) and Article XVIII, Section 3 of the Ohio Constitution (Municipal Home Rule Amendment).

Violation of the One-Subject Rule

3. Article II, Section 15(D) of the Ohio Constitution requires every piece of legislation to address only a single subject and serve a single purpose.

4. As introduced, S.B. 331 regulated the “sale of dogs from pet stores and dog retailers” and required “the Director of Agriculture to license pet stores.” (S.B. No. 331 (As Introduced), attached Exhibit A).

5. The final, enacted version of S.B. 331 amended and enacted statutory provisions in Ohio Revised Code Chapters 959, 956, 1717, 4111, and 4939.

6. The enacted version of S.B. 331 covers a myriad of unrelated subjects, including, but not limited to: (a) sale of dogs from pet stores and dog retailers; (b) licensing of pet stores; (c) prohibition on sexual conduct with animals; (d) psychological counseling for animal sex offenders; (e) penalties for engaging in activities associated with cockfighting, bearbaiting, or other types of animal fighting; (f) elimination of residency requirements for the appointment of an agent to a county humane society; (g) prohibition on a political subdivision from establishing minimum wage requirements different from the rate set by state law; (h) the authority of a private employer to regulate hours and location of work; and (i) a municipality's ability to regulate small cell wireless communication facilities and equipment in the public right of way.

7. S.B. 331 does not address a single subject, nor does it serve a single purpose; therefore, it violates Article II, Section 15(D) of the Ohio Constitution.

Violation of the Home Rule Amendment

8. In addition to violating the One Subject Rule, S.B. 331 violates Plaintiffs' home rule authority set forth in Article XVIII, Section 3 of the Ohio Constitution.

9. S.B. 331 amended O.R.C. §§ 4939.01, 4939.02, and 4939.08. It further enacted O.R.C. §§ 4939.031, 4939.032, 4939.033, 4939.035, 4939.037, 4939.038, 4939.039, 4939.0311, 4939.0313, 4939.0315, 4939.0317, 4939.0319, 4939.0321, 4939.0325, 4939.0327. Collectively, these amendments and enactments will be referenced as the "Small Cell Provisions" throughout this Complaint.

10. The Small Cell Provisions violate Plaintiffs' authority to exercise the functions of local self-government by limiting or preempting their authority to regulate or control the use of public right of ways and contract for the use of public right of ways and municipal property.

11. Furthermore, the Small Cell Provisions are not "general laws" of the state, and do not override a municipality's authority to regulate the use of public right of ways, which is precisely what the Small Cell Provisions purport to accomplish.

PARTIES

12. Plaintiff, City of Hudson, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Summit County, Ohio.

13. Plaintiff, City of Wooster, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Wayne County, Ohio.

14. Plaintiff, City of Medina, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Medina County, Ohio.

15. Plaintiff, Village of Richfield, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Summit County, Ohio.

16. Plaintiff, Village of Gates Mills, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

17. Plaintiff, Village of Moreland Hills, is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

18. Plaintiff, City of Richmond Heights, Ohio, is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

19. Plaintiff, City of Cleveland Heights, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

20. Plaintiff, City of Euclid, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

21. Plaintiff, City of Lakewood, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

22. Plaintiff, City of Rocky River, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

23. Plaintiff, City of Warrensville Heights, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

24. Plaintiff, Mayfield Village, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

25. Plaintiff, City of Mayfield Heights, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

26. Plaintiff, City of Oberlin, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Lorain County, Ohio.

27. Plaintiff, City of Avon, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Lorain County, Ohio.

28. Plaintiff, Village of Cuyahoga Heights, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

29. Plaintiff, City of Berea, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

30. Plaintiff, Village of Hunting Valley, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio and Geauga County, Ohio.

31. Plaintiff, City of Brooklyn, Ohio is a chartered municipal corporation under Article XVIII, Section 3 of the Ohio Constitution, and is located in Cuyahoga County, Ohio.

32. The municipal corporations identified above are collectively referred to as "Plaintiffs" throughout this Complaint.

33. Defendant, the State of Ohio ("State"), is a state of the United States of America.

JURISDICTION

34. This is a civil action against the State that seeks declaratory and injunctive relief. As such, it falls within the original jurisdiction of this Court.

35. Plaintiffs have standing to bring this action because they are challenging the constitutional validity of S.B. 331 and the Small Cell Provisions therein, which purports to regulate the Plaintiffs' authority over their public right of ways and their property in the public right of ways.

36. A justiciable cause exists between the parties as the State, through the enactment of S.B. 331 and the Small Cell Provisions, unconstitutionally violated Ohio's One Subject Rule under Article II, Section 15(D) of the Ohio Constitution.

37. A justiciable cause exists between the parties as the State, through the enactment of S.B. 331 and the Small Cell Provisions, improperly seeks to usurp and deny the Plaintiffs' home rule authority pursuant to Article XVIII, Section 3 of the Ohio Constitution.

38. S.B. 331 and the Statutory Amendments are due to become effective on March 21, 2017. Plaintiffs are requesting this Court issue a temporary restraining order before that date and, thereafter, a preliminary injunction to stay and/or prevent the State from implementing S.B. 331 and the Small Cell Provisions while the Court considers the constitutional issues raised by Plaintiffs with respect to their Complaint for declaratory judgment.

39. This Court is authorized to grant such injunctive relief pursuant to O.R.C. § 2721.03 and Ohio Civ. R. 65.

40. Plaintiffs' claims are timely filed.

VENUE

41. Venue of this action is proper in this Court because Defendant, State of Ohio, is located and conducts activity through the application of its statutes, including S.B. 331, within every county in Ohio, including Summit County, Ohio.

42. Venue in this Court is proper pursuant to Ohio Civil Rule 3(B)(1), (3), and (6).

BACKGROUND AND FACTS

43. Senate Bill 331 was introduced in the Ohio Senate on May 17, 2016.

44. As introduced, the bill only contained regulations regarding pet stores and licensing.

45. A true and accurate copy of S.B. 331, as introduced, is attached hereto as Exhibit A.

46. On May 25, 2016, the Ohio Senate passed Sub. S.B. 331.

47. A true and accurate copy of Sub. S.B. No. 331, as passed by the Senate, is attached hereto as Exhibit B.

48. On May 31, 2016, Sub. S.B. 331 was introduced in the Ohio House of Representatives.

49. On November 10, 2016, Sub. S.B. 331 was referred to a House committee, specifically the Finance Committee.

50. On December 7, 2016, Sub. S.B. 331 reemerged with amendments and enactments affecting Ohio Revised Code Chapters 956, 959, 1717, 4111, and 4939.

51. On December 7, 2016, the Ohio Senate concurred in the House amendments to S.B. 331.

52. On December 7, 2016, the Ohio House of Representatives passed S.B. 331.

53. The Governor signed S.B. 331 on December 19, 2016.

54. A true and accurate copy of S.B. 331, as enacted, is attached hereto as Exhibit C.

55. The short title of S.B. 331 is as follows: "Regulate dog sales and license pet stores."

56. The long title of S.B. 331 is as follows: "To amend sections 956.01, 956.03, 956.04, 956.12, 956.13, 956.14, 956.15, 956.18, 959.15, 959.99, 1717.06, 4111.02, 4939.01, 4939.02, 4939.03, and 4939.08; to enact sections 956.051, 956.181, 956.19, 956.20, 956.21, 956.22, 956.23, 956.99, 959.21, 4113.85, 4939.031, 4939.032, 4939.033, 4939.035, 4939.037, 4939.038, 4939.039, 4939.0311, 4939.0313, 4939.0315, 4939.0317, 4939.0319, 4939.0321, 4939.0325, and 4939.0327 of the Revised Code; and to amend Section 211.10 of Am. Sub. H.B. 64 of the 131st General Assembly to regulate the sale of dogs from pet stores and dog retailers,

to require the Director of Agriculture to license pet stores, and to revise the civil penalties applicable to dog breeders and other specified entities; to govern construction and attachment activities related to small cell wireless facilities in the public way; to prohibit political subdivisions from establishing minimum wage rates different from the rate required by state law; to generally grant private employers exclusive authority to establish policies concerning hours and location of work, scheduling, and fringe benefits, unless an exception applies; to prohibit a person from engaging in sexual conduct with an animal and related acts, to provide for the seizure and impoundment of an animal that is the subject of a violation, and to authorize a sentencing court to require an offender to undergo psychological evaluation or counseling; to prohibit and establish an increased penalty for knowingly engaging in activities associated with cockfighting, bearbaiting, or pitting an animal against another; to remove the residency requirement for the appointment of an agent to a county humane society; and to make an appropriation.”

57. As enacted, S.B. 331 amended or enacted statutory provisions in Chapters 956, 959, 1717, 4111, and 4939.

58. Chapter 956 of the Ohio Revised Code is entitled “Regulation and Licensing of Dog Kennels,” and is contained in Title IX, “Agriculture – Animals – Fences.”

59. Chapter 959 of the Ohio Revised Code is entitled “Offenses Relating to Domestic Animals,” and is contained in Title IX, “Agriculture – Animals – Fences.”

60. Chapter 1717 of the Ohio Revised Code is entitled “Humane Societies,” and is contained in Title XVII, “Corporations – Partnerships.”

61. Chapter 4111 of the Ohio Revised Code is entitled “Minimum Wage Standards,” and is contained in Title XLI, “Labor and Industry.”

62. Chapter 4949 of the Ohio Revised Code is entitled “Use of Municipal Public Way,” and is contained in Title XLIX, “Public Utilities.”

63. The Small Cell Provisions of S.B. 331 permit licensed wireless providers and franchised cable operators (“wireless providers”) to request or apply to do any of the following in a public right of way:

- (a) Attach a small cell wireless facility (e.g., distributed antenna system and a small cell facility) to a monopole, light pole, traffic signal, sign pole, or utility pole capable of supporting the wireless facility;
- (b) Locate two or more wireless service providers’ small cell wireless facilities on the same wireless support structure (i.e., a monopole, light pole, traffic signal, sign pole, or utility pole);
- (c) Replace or modify an existing small cell wireless facility on a monopole, light pole, traffic signal, sign pole, or utility pole; or
- (d) Construct, modify, or replace a monopole, light pole, traffic signal, sign pole, or utility pole associated with a small cell wireless facility.

64. The Small Cell Provisions deem the above requests or applications to be “permitted uses” in public right of ways of a municipality.

65. The “Small Cell Provisions” prohibit municipalities from doing the following in considering a request or application to locate, construct, replace, or modify wireless facilities and equipment in the public right of way:

- (a) Denying the requester’s use of municipally-owned support structures in the public right of way – e.g., street light poles, traffic signal poles, sign poles, monopoles, or utility poles (other than municipal electric poles), etc.
- (b) Require submission of information about the requestor’s service, customer demand, or quality of service to a particular site;
- (c) Evaluate a requestor’s business decisions with respect to a particular site;
- (d) Require submission of information about the need for the small cell wireless facility or associated wireless support structure (i.e., utility poles, monopoles, etc.);

- (e) Require requestor to justify the need for the small cell wireless facility or associated wireless support structures;
- (f) Prevent requestor from locating the small cell wireless facility or structure in a residential area or within a specific distance from a residence or other structure;
- (g) Evaluate the request based upon on the availability of other potential locations;
- (h) Demand removal of existing wireless support structures or facilities as a condition of approval;
- (i) Impose restrictions with respect to objects in navigable airspace that are stricter or in conflict with FAA regulations;
- (j) Impose requirements for bonds, escrow deposits, letters of credit, or other financial surety to ensure removal or abandoned or unused wireless facilities, unless the municipal corporation already imposes similar requirements on permits for occupancy in a public right of way;
- (k) Unreasonably discriminate among providers of functionally equivalent services;
- (l) Impose unreasonable requirements regarding maintenance or appearance of small cell wireless facilities (e.g., types of materials to be used, screening, or landscaping);
- (m) Require requestor to “purchase, lease, or use facilities, networks, or services owned or operated by the municipality”;
- (n) Condition approval of consent on the requestor agreeing to co-locate with other providers;
- (o) Limit the duration of any permit;
- (p) Impose set-backs or fall-zone requirements different from other structures in the right of way;
- (q) Impose environmental testing, sampling, or monitoring requirements that exceed federal law or not imposed on other types of construction;
- (r) Impose regulations related to radio frequency emissions or exposure to such emissions contrary to, or that exceed, the rules of the federal communications commission; or

- (s) Impose separation requirements that require spacing between wireless facilities or support structures.

66. The Small Cell Provisions of S.B. 331 further provide that a municipality cannot require any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a small cell wireless facility.

67. The Small Cell Provisions prohibit municipalities from requiring wireless providers to obtain consent to enter the public right of way for routine maintenance and/or replacement of wireless facilities or equipment.

68. The Small Cell Provisions of S.B. 331 cap the amount a municipality may charge per wireless communication facility and equipment to no more than \$250.00 per request for consent to construct, attach, locate, or replace wireless facilities or equipment, regardless of the costs incurred by the municipality in considering such request.

69. The Small Cell Provisions of S.B. 331 cap the amount a municipality may charge for attachment to monopoles, light poles, traffic signals, sign poles, or utility poles owned by municipalities to no more than \$200 per year for each attachment, regardless of whether such amount covers the municipality's cost associated with the attachment.

70. The Small Cell Provisions only apply to municipalities, and do not apply to Ohio county or township public right of ways.

71. The Small Cell Provisions limit or preempt municipalities from regulating or controlling the location of utilities in all districts, including, but not limited to historic districts, renovated downtown areas, residential districts and residential and commercial subdivisions. For example, municipalities will be barred from enforcing ordinances or regulations requiring utilities in certain narrowly defined districts to be placed or located below ground.

72. Residential neighborhoods, historic districts, and the like (where utilities are generally required to be underground) will be negatively affected by the Small Cell Provisions. The amendments effectively prohibit Plaintiffs from regulating the placement, location, or construction of small cell wireless facilities and equipment in these areas.

73. Senate Bill 331 is effective on March 21, 2017, unless this Court issues a temporary restraining order or injunction enjoining the State from implementing and enforcing the provisions of S.B. 331.

FIRST CAUSE OF ACTION

(Declaratory Judgment: S.B. 331 Violates the One Subject Rule)

74. Plaintiffs incorporate Paragraphs 1 through 73 by reference as if fully rewritten herein.

75. Ohio Constitution, Article II, Section 15(D) expressly provides that “no bill shall contain more than one subject, which shall be clearly expressed in its title.”

76. S.B. 331 originally intended to regulate the sale of dogs from pet stores and require licensing of pet stores.

77. As passed by the Senate on May 25, 2016, Sub. S.B. No. 331 did not contain any provisions related to small cell wireless facilities.

78. On December 7, 2016, certain riders were added to the original S.B. 331, which included, but are not limited to: (a) prohibition on sexual conduct with animals; (b) psychological counseling for animal sex offenders; (c) penalties for engaging in activities associated with cockfighting, bearbaiting, or other types of animal fighting; (d) elimination of residency requirements for the appointment of an agent to a county humane society; (e) prohibition on a political subdivisions from establishing minimum wages requirements different from the rate set by state law; (f) the authority of a private employer to regulate hours and

location of work; and (g) a municipality's ability to regulate small cell wireless facilities and equipment in the public right of way.

79. On December 7, 2016, S.B. 331 passed both the Ohio House of Representatives and Senate.

80. As passed, S.B. 331 addressed multiple and distinctly different substantive legislative proposals.

81. S.B. 331 does not address a single subject, nor does it serve a single purpose and it violates Article II, Section 15(D) of the Ohio Constitution.

82. Accordingly, S.B. 331 must be declared unconstitutional as it violates Ohio's One Subject Rule set forth in Article II, Section 15(D) of the Ohio Constitution.

SECOND CAUSE OF ACTION

(Declaratory Judgment: Violation of Home Rule Powers – Local Self-Government)

83. Plaintiffs incorporate Paragraphs 1 through 82 by reference as if fully rewritten herein.

84. Article XVIII, Section 3 of the Ohio Constitution ("Home Rule Amendment"), provides, in part, as follows:

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.

85. 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. Morrison v. Beck Energy Corp.*, 2015-Ohio-485, ¶ 14, 143 Ohio St. 3d 271, 275, 37 N.E.3d 128, 133, (quoting *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 212, 80 N.E.2d 769 (1948)).

86. The first step in a home-rule analysis is to determine “whether the matter in question involves an exercise of local self-government or an exercise of local police power.” *Twinsburg v. State Empl. Relations Bd.*, 39 Ohio St.3d 226, 228, 530 N.E.2d 26 (1988), *Rocky River v. State Empl. Relations Bd.*, 43 Ohio St.3d 1, 20, 539 N.E.2d 103 (1989).

87. If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because “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.

88. The Ohio Supreme Court Courts has recognized municipality’s home rule authority to control or regulate public right of ways. *See Perrysburg v. Ridgeway*, 108 Ohio St. 245, 140 N.E. 595 (1923); *Vernon v. Warner Amex Cable* (1986), 25 Ohio St.3d 117, 495 N.E.2d 374 (1986); *Billings v. Cleveland Ry.* (1915), 92 Ohio St. 478, 111 N.E. 155; *Wooster v. Arbenz*, 116 Ohio St. 281, 156 N.E. 210 (1927).

89. Ohio statutory law specifically recognizes Ohio municipalities’ constitutional authority to regulate its rights-of-way. *See, e.g.*, R.C. 4939.04(B) (stating “[t]he 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).

90. Plaintiffs’ authority to contract arises as a power of local self-government under the Home Rule Amendment.

91. As an exercise of local self-government, municipalities may convey or lease property owned by them and not needed for municipal purposes.

92. The Small Cell Provisions limit or preempt municipal authority to regulate or control the use of public right of ways, contract for the use of right of ways and municipal property, charge fees for the use of a public right of ways, amongst other things.

93. The Small Cell Provisions further require municipalities to lease their own support structures in the public right of way at arbitrarily capped fees, amongst other things.

94. The Small Cell Provisions are illegal, unconstitutional, and a clear violation of municipal home rule, and preempt Plaintiffs' exercise of their local self-government authority.

95. Accordingly, the Small Cell Provisions must be declared to be unconstitutional and void.

THIRD CAUSE OF ACTION

(Declaratory Judgment: Violation of Home Rule Powers – Police Power)

96. Plaintiffs incorporate Paragraphs 1 through 95 by reference as if fully rewritten herein.

97. The Home Rule Amendment establishes, in part, that “[m]unicipalities shall have authority . . . to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with the general laws.”

98. The State's attempt to restrict and preempt Plaintiffs' home rule authority, as contained in the Small Cell Provisions of S.B. 331, violates the Home Rule Amendment.

99. The Home Rule Amendment establishes that municipalities may exercise such local police, sanitary, and other similar regulations as are not in conflict with the *general* laws of the State.

100. To constitute a *general* law for purposes of home rule analysis, "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 (2002).

101. The Small Cell Provisions do not apply to Ohio townships or counties, and the public right of ways within those jurisdictions, and contain non-uniform classifications that are arbitrary, unreasonable, or capricious.

102. The Small Cell Provisions limit or preempt municipal authority to regulate or control the use of public right of ways, contract for the use of right of ways and municipal property, and charge fees for the use of a public right of way, amongst other things.

103. The Small Cell Provisions require municipalities to lease support structures owned by them in the public right of way at arbitrarily capped fees, amongst other things.

104. The Small Cell Provisions are not part of a statewide and comprehensive legislative enactment.

105. The Small Cell Provisions do not apply to all parts of the state alike.

106. The Small Cell Provisions do not operate uniformly throughout the state.

107. The Small Cell Provisions purport to limit local municipal legislative authority, and do not prescribe a rule of conduct upon citizens generally.

108. The Small Cell Provisions are not general laws and violate the Home Rule Amendment under Article XVIII, Sec. 3 of the Ohio Constitution.

109. Accordingly, the Small Cell Provisions, as set forth in S.B. 331, must be declared unconstitutional.

FOURTH CAUSE OF ACTION**(Declaratory Judgment: Invalidation of Separate Provisions of Senate Bill 331)**

110. Plaintiffs incorporate Paragraphs 1 through 109 by reference as if fully rewritten herein.

111. Alternatively, if the Court determines that Senate Bill 331 or the Small Cell Provisions are not unconstitutional in their entirety, and that certain unconstitutional provisions can be severed out pursuant to the rule of law set forth in *Cleveland v. Ohio*, 138 Ohio St.3d 232 (2014), Plaintiffs request this Court to find that the Small Cell Provisions are an unconstitutional violation of the Home Rule Amendment.

112. Accordingly, to the extent only portions of S.B. 331 or the Small Cell Provisions are unconstitutional, Plaintiffs request those portions be declared unconstitutional, void, and severed from S.B. 331 and/or the Small Cell Provisions.

FIFTH CAUSE OF ACTION**(TRO/Preliminary and Permanent Injunction)**

113. Plaintiffs incorporate Paragraphs 1 through 112 by reference as if fully rewritten herein.

114. The purpose of the Plaintiffs' requests for a temporary restraining order and preliminary injunction is to preserve the status quo in this matter pending final adjudication of the declaratory judgment action.

115. The State's violation of the One Subject Rule is self-evident; therefore, the Plaintiffs have a substantial likelihood of success on the merits of their claims.

116. The State's violation of the Ohio Constitution in seeking to deprive the Plaintiffs of their established Home Rule Authority is self-evident, and Plaintiffs have a substantial likelihood of success on the merits of their claims.

117. The Plaintiffs and their 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 Plaintiffs' communities and the residents thereof, for which there can be no compensatory relief through monetary damages.

118. There will be no unjustified harm to the State or third parties due to the granting of the Plaintiffs' request for temporary restraining order and injunction. Ohio municipalities have had the authority to regulate public right of ways, including the placement and construction of wireless structures and equipment within the public right of way, and wireless structures and equipment have been placed in public rights of way in Ohio's municipalities, albeit within the regulations administered by municipalities.

119. The public interest will be served through issuance of a temporary restraining order and also by a preliminary injunction by preserving the legal relationship between the State and the Plaintiffs as established by the Ohio Constitution during the pendency of this litigation.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request the Court:

A. Issue a declaration that:

1. S.B. 331 is unconstitutional because it violates Ohio Constitution Article II, Section 15(D) – the “One-Subject Rule.”
2. The amendments, as set forth in S.B. 331, to O.R.C. §§ 4939.01, 4939.02, 4939.03, 4939.031, 4939.032, 4939.033, 4939.035, 4939.037, 4939.038, 4939.039, 4939.0311, 4939.0313, 4939.0315, 4939.0317, 4939.0319, 4939.0321, 4939.0325, 4939.0327, and 4939.08 violate the Ohio Constitution by infringing upon the City's Home Rule Powers of local self-government.

3. The amendments, as set forth in S.B. 331 to O.R.C. §§ 4939.01, 4939.02, 4939.03, 4939.031, 4939.032, 4939.033, 4939.035, 4939.037, 4939.038, 4939.039, 4939.0311, 4939.0313, 4939.0315, 4939.0317, 4939.0319, 4939.0321, 4939.0325, 4939.0327, and 4939.08 are not general laws and violate the Ohio Constitution by infringing upon Plaintiffs' Home Rule authority to adopt and enforce, within their limits, such local police, sanitary and other similar regulations as are not in conflict with the general laws.
4. The following sections of the Revised Code amended by S.B. 331 are void and unenforceable: O.R.C. §§ 4939.01, 4939.02, 4939.03, 4939.031, 4939.032, 4939.033, 4939.035, 4939.037, 4939.038, 4939.039, 4939.0311, 4939.0313, 4939.0315, 4939.0317, 4939.0319, 4939.0321, 4939.0325, 4939.0327, and 4939.08.
5. In the alternative, enforce the severability clause in S.B. 331 to remove from the bill the following Ohio Revised Code provisions, as amended by S.B. 331: O.R.C. §§ 4939.01, 4939.02, 4939.03, 4939.031, 4939.032, 4939.033, 4939.035, 4939.037, 4939.038, 4939.039, 4939.0311, 4939.0313, 4939.0315, 4939.0317, 4939.0319, 4939.0321, 4939.0325, 4939.0327, and 4939.08.

B. Issue a temporary restraining order enjoining the effectiveness of S.B. 331 and enjoining the State of Ohio, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, from implementing or enforcing S.B. 331.

C. Issue a temporary restraining order enjoining the effectiveness of the following Ohio Revised Code provisions, as amended by S.B. 331, and temporarily enjoining the State of Ohio, its officers, agents, servants, employees, and attorneys, and those persons in active concert or

participation with them, from implementing or enforcing the following Ohio Revised Code provisions, as amended by S.B. 331: O.R.C. §§ 4939.01, 4939.02, 4939.03, 4939.031, 4939.032, 4939.033, 4939.035, 4939.037, 4939.038, 4939.039, 4939.0311, 4939.0313, 4939.0315, 4939.0317, 4939.0319, 4939.0321, 4939.0325, 4939.0327, and 4939.08 during the pendency of this litigation.

D. Enjoin, preliminarily and permanently, the effectiveness of S.B. 331 and enjoin Defendant, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, from implementing or enforcing the provisions of S.B. 331.

E. Enjoin, preliminarily and permanently, the effectiveness of the following Ohio Revised Code provisions, as amended by S.B. 331: O.R.C. §§ 4939.01, 4939.02, 4939.03, 4939.031, 4939.032, 4939.033, 4939.035, 4939.037, 4939.038, 4939.039, 4939.0311, 4939.0313, 4939.0315, 4939.0317, 4939.0319, 4939.0321, 4939.0325, 4939.0327, and 4939.08.

F. Award all such other relief as this Court may deem just and proper.

Respectfully submitted,

/s/ R. Todd Hunt

R. Todd Hunt (Reg. No. 0008951)

Email: rthunt@walterhav.com

Direct Dial: 216-928-2935

William R. Hanna (Reg. No. 0068705)

Email: whanna@walterhav.com

Direct Dial: (216) 928-2940

Brendan D. Healy (Reg. No. 0081225)

Email: bhealy@walterhave.com

Direct Dial: 216-619-7851

Benjamin G. Chojnacki (Reg. No. 0087401)

E-Mail: bchojnacki@walterhav.com

Direct Dial: 216-619-7850

WALTER | HAVERFIELD LLP

The Tower at Erieview

1301 East Ninth Street, Suite 3500

Cleveland, Ohio 44114-1821

Telephone: (216) 781-1212

Facsimile: (216) 575-0911