

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

CITY OF COLUMBUS
90 West Broad Street
Columbus, Ohio 43215,

and

CITY OF BEXLEY
2242 E. Main Street
Bexley, Ohio 43209,

and

CITY OF CINCINNATI
801 Plum Street, Suite 214
Cincinnati, Ohio 45202,

and

CITY OF CLEVELAND
601 Lakeside Avenue
Cleveland, Ohio 44114,

and

CITY OF DUBLIN
5555 Perimeter Drive
Dublin, Ohio 43017,

and

CITY OF GAHANNA
200 S. Hamilton Road
Gahanna, Ohio 43230,

and

CITY OF GRANDVIEW HEIGHTS
1016 Grandview Avenue
Grandview Heights, Ohio 43209,

and

Case No.

Judge

CITY OF HEATH :
1287 Hebron Road :
Heath, Ohio 43056, :

and :
:

CITY OF HILLIARD :
1287 Hebron Road :
Hilliard, Ohio 43206, :

and :
:

CITY OF OXFORD :
15 South College Avenue :
Oxford, Ohio 45056, :

and :
:

CITY OF REYNOLDSBURG :
7232 East Main Street :
Reynoldsburg, Ohio 43068, :

and :
:

CITY OF UPPER ARLINGTON :
3600 Tremont Road :
Upper Arlington, Ohio 43221, :

and :
:

CITY OF WHITEHALL :
360 South Yearling Road :
Whitehall, Ohio 43213, :

and :
:

CITY OF WORTHINGTON :
6650 North High Street :
Worthington, Ohio 43085, :

Plaintiffs, :

vs. :
:

STATE OF OHIO, :
30 East Broad Street, 17th Floor :
Columbus, Ohio 43215, :

and :

OHIO DEPARTMENT OF HEALTH :
246 North High Street :
Columbus, Ohio 43215 :

and :

DR. BRUCE VANDERHOFF :
Director, Ohio Department of Health :
246 North High Street :
Columbus, Ohio 43215 :

Defendants. :

SERVE ALSO: :
Attorney General Dave Yost :
30 East Broad Street, 17th Floor :
Columbus, Ohio 43215 :

VERIFIED COMPLAINT

Now come the Plaintiffs, the Cities of Columbus, Bexley, Cincinnati, Cleveland, Dublin, Gahanna, Grandview Heights, Heath, Hilliard, Oxford, Reynoldsburg, Upper Arlington, Whitehall, and Worthington, by and through counsel, and for their complaint, state the following:

1. The Plaintiff Cities are home rule charter municipalities located in Ohio.
2. As Ohio municipalities, Plaintiffs have the “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.” Article XVIII, Section 3, Ohio Constitution.

3. The Plaintiff City of Columbus is an Ohio municipality predominately located in Franklin County, Ohio.

4. The Plaintiff City of Columbus has exercised its home rule authority to enact ordinances pertaining to the ability to sell tobacco, tobacco products, and electronic smoking devices inside city limits.

5. The Plaintiff City of Bexley is an Ohio municipality located in Franklin County, Ohio.

6. The Plaintiff City of Bexley has exercised its home rule authority to enact ordinances pertaining to the ability to sell tobacco, tobacco products, and electronic smoking devices inside city limits.

7. The Plaintiff City of Cincinnati is an Ohio municipality located in Hamilton County, Ohio.

8. The Plaintiff City of Cincinnati has exercised its home rule authority to enact ordinances pertaining to the ability to use and sell tobacco, tobacco products, and electronic smoking devices inside city limits.

9. The Plaintiff City of Cleveland is an Ohio municipality located in Cuyahoga County, Ohio.

10. The Plaintiff City of Cleveland has exercised its home rule authority to enact ordinances pertaining to tobacco, tobacco products, and electronic smoking devices.

11. The Plaintiff City of Dublin is an Ohio municipality located in Franklin, Delaware, and Union Counties, Ohio.

12. The Plaintiff City of Dublin has exercised its home rule authority to enact ordinances pertaining to the ability to use and sell tobacco, tobacco products, and electronic smoking devices inside city limits.

13. The Plaintiff City of Gahanna is an Ohio municipality located in Franklin County, Ohio.

14. The Plaintiff City of Gahanna has exercised its home rule authority to enact ordinances pertaining to the ability to sell tobacco, tobacco products, and electronic smoking devices inside city limits.

15. The Plaintiff City of Grandview Heights is an Ohio Municipality located in Franklin County, Ohio.

16. The Plaintiff City of Grandview Heights has exercised its home rule authority to enact ordinances pertaining to the ability to sell tobacco, tobacco products, and electronic smoking devices inside city limits.

17. The Plaintiff City of Heath is an Ohio municipality located in Licking County, Ohio.

18. The Plaintiff City of Heath has exercised its home rule authority to enact ordinances prohibiting the marketing inside the city of cartridge-based electronic nicotine delivery systems (ENDS) and other ENDS products that have not obtained premarket authorization from the U.S. Food and Drug Administration (FDA).

19. The Plaintiff City of Hilliard is an Ohio municipality located in Franklin County, Ohio.

20. The Plaintiff City of Hilliard has exercised its home rule authority to enact ordinances pertaining to the ability to use and sell tobacco, tobacco products, and electronic smoking devices inside city limits.

21. The Plaintiff City of Oxford is an Ohio municipality located in Butler County, Ohio.

22. The Plaintiff City of Oxford has exercised its home rule authority to enact ordinances pertaining to the ability to sell tobacco, tobacco products, and electronic smoking devices inside city limits.

23. The Plaintiff City of Reynoldsburg is an Ohio municipality located in Fairfield, Licking, and Franklin Counties, Ohio.

24. The Plaintiff City of Reynoldsburg has exercised its home rule authority to enact ordinances pertaining to the ability to use and sell tobacco, tobacco products, and electronic smoking devices inside city limits.

25. The Plaintiff City of Upper Arlington is an Ohio municipality located in Franklin County, Ohio.

26. The Plaintiff City of Upper Arlington has exercised its home rule authority to enact ordinances pertaining to the ability to use and sell tobacco, tobacco products, and electronic smoking devices inside city limits.

27. The Plaintiff City of Whitehall is an Ohio Municipality located in Franklin County, Ohio.

28. The Plaintiff City of Whitehall has exercised its home rule authority to enact ordinances pertaining to the ability to sell tobacco, tobacco products, and electronic smoking devices inside city limits.

29. The Plaintiff City of Worthington is an Ohio Municipality located in Franklin County, Ohio.

30. The Plaintiff City of Worthington has exercised its home rule authority to enact ordinances pertaining to the ability to sell tobacco, tobacco products, and electronic smoking devices inside city limits.

31. The Defendant State of Ohio is the state in which the Plaintiff Cities are located.

32. The Defendant Ohio Department of Health is a state cabinet agency, which has the purpose to “advance[e] the health and well-being of all Ohioans by transforming the state’s public health system through unique partnerships and funding streams; addressing the community conditions and inequities that lead to disparities in health outcomes; and implementing data-driven, evidence-based solutions.” <https://odh.ohio.gov/about-us>

33. Defendant Dr. Bruce Vanderhoff is the Director of the Ohio Department of Health. He is sued in his official capacity only.

34. The Plaintiffs bring their claims under R.C. Chapter 2721 seeking declaratory relief.

35. The Plaintiffs also seek a temporary restraining order, preliminary injunction, and permanent injunction.

36. This Court has jurisdiction to hear the Plaintiffs’ claims.

37. Venue is proper in Franklin County since the Defendants maintain their principal place of business in Franklin County, Ohio.

The Effects of Tobacco Use in Ohio

38. In 2019, the State of Ohio adopted Tobacco 21, a law that prohibited individuals under the age of 21 from purchasing tobacco or tobacco products.

39. In February of 2020, the Ohio Department of Health produced a report called “Tobacco use highlights from the 2019 Ohio Youth Risk Behavior/Youth Tobacco Survey.” It can be accessed at https://odh.ohio.gov/wps/wcm/connect/gov/b17cb12d-8de9-4fc5-96b0-26ced4f5ccb3/YRBS_YTS+Governor+Report_final_02.24.2020_.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_79GCH8013HMOA06A2E16IV2082-b17cb12d-8de9-4fc5-96b0-26ced4f5ccb3-n-dwE8o. A true and accurate copy of that report is attached to this Complaint as Exh. A.

40. That report summarized its key findings. Among those key findings were that tobacco use by Ohio middle and high school students increased by 88% from 2016 to 2019. The report defined tobacco use as the use “cigarettes, e-cigarettes, flavored tobacco, smokeless tobacco, cigars and cigarillos, [or] hookahs and waterpipes.”

41. Specifically, during that period of time, tobacco use increased with respect to Ohio high school students by 52% and with Ohio middle school students by 125%.

42. The study also found that e-cigarettes were the most commonly used tobacco product by both high school and middle school students in Ohio.

43. The study found that 11.9% of students in middle school and 29% of students in high school used e-cigarettes.

44. The study further showed that 65.8% of the high school students who used e-cigarettes also used marijuana.

45. This study found that in 2019, 16.5% of Ohio middle school students self-reported that they were currently using tobacco products.

46. It found that the most popular tobacco product for middle school students in Ohio was e-cigarettes (with 11.9% of middle school students using that product), followed by flavored

tobacco (6.4%), cigars and cigarillos (4.8%), smokeless tobacco (4.1%), and finally cigarettes (3.0%).

47. It also found that in 2019, 35.6% of Ohio high school students reported currently using tobacco products.

48. It found that the most popular tobacco product for high school students in Ohio was e-cigarettes (29%), followed by flavored tobacco (13.6%), smokeless tobacco (9.9%), cigars and cigarillos (7.2%), and cigarettes (4.9%).

49. The study also showed that Hispanic middle school students in Ohio were twice as likely to use e-cigarettes as white students and four times more likely to use e-cigarettes than non-white students.

50. The study also showed that from 2016 to 2019 tobacco use by Ohio middle school students more than doubled. During that same timeframe, use of two or more tobacco products by Ohio middle school students also more than doubled.

51. Similarly, from 2016 to 2019, the number of Ohio middle school students who used cigarettes tripled while the number of Ohio middle school students who used e-cigarettes more than quadrupled.

52. Finally, the study found that from 2016 to 2019, the number of Ohio high school students who used two or more tobacco products or who used e-cigarettes more than doubled.

53. The State of Ohio enacted a law prohibiting the sale, giving away, or distribution of tobacco and tobacco related product to individuals under the age of 21.

54. That ban, known as Tobacco 21, became effective on October 17, 2019.

The Plaintiff Cities Take Action

The City of Columbus

55. At the time the State's Tobacco 21 law became effective, the City of Columbus had a smoking rate of 35%.

56. In December 2016, the Columbus City Council passed Ordinance Number 3156-2016. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. B.

57. Ordinance 3156-2016 required any retailer of tobacco products or paraphernalia to obtain a license from the Columbus Board of Health. Columbus City Code (C.C.C.) 2329.13(A).

58. Failure to obtain a vendor's license was deemed a first-degree misdemeanor. C.C.C. 2329.13(E).

59. If a vendor were found guilty of a second offense, that vendor would be denied the ability to obtain a license for five years. *Id.*

60. This ordinance also prohibited selling tobacco or other tobacco products to any individual under the age of 21.

61. The City of Columbus, therefore, banned the sale of tobacco to any individual under the age of 21 several years before the state decided to do so.

62. Ordinance 3156-2016 also authorized the Columbus Board of Health to promulgate rules and regulations to carry out the purposes and intent of C.C.C. 2329.13, that is, to protect the public health, safety and welfare. C.C.C. 2329.13(H).

63. In February of 2017, the Columbus Board of Health first promulgated Chapter 248 of the Columbus City Health Code, thereby establishing the City's Tobacco Products and Paraphernalia Sales licensing program (hereinafter "the Columbus Licensing Program").

64. Ordinance 3156-2016 in conjunction with the Columbus Licensing Program, however, did not do enough to address the problem of the use of tobacco and tobacco products in the Columbus community.

65. Columbus City Council held hearings on tobacco use in order to determine what legislative approach might be best to curtail smoking in the City.

66. This approach also sought to eliminate the twin scourges of tobacco use and vaping by minors.

67. As a result of these hearings, the City learned that the threat of small fines and misdemeanor prosecution was not sufficient to deter some retailers from selling tobacco and tobacco products to minors.

68. On December 12, 2022, the City passed Ordinance Number 3253-2022, a true and accurate copy of which is attached to this Complaint as Exh. C.

69. That Ordinance gave the Columbus Department of Public Health (hereinafter “Columbus Public Health”) specific authority to enforce the City’s tobacco laws and Health Code provisions.

70. The Ordinance set forth a civil penalty regime for violations through Chapter 248 of the Columbus City Health Code.

71. In addition to allowing administrative penalties and fines for violations, the Ordinance also gave the Columbus Public Health the right to deny a tobacco vendor’s license to a business that violated the City’s tobacco regulations.

72. This Ordinance included a ban on the sale of flavored tobacco as well as tobacco products such as e-cigarettes, cigarillos, and vaping products.

73. City Council passed this Ordinance on December 12, 2022.

74. Many of the changes in Ordinance 3253-2022 became effective 30 days after the Ordinance was signed by the Mayor.

75. The flavored tobacco provisions, however, became effective January 1, 2024.

76. The Ordinance itself recognized that more than 2 million middle school and high school students in the United States were currently using e-cigarettes and that more than 80% of them were using flavored e-cigarettes.

77. It also recognized that while adult cigarette usage had declined nationally, Franklin County saw an 8% increase in its smoking rate among African American adults.

78. Further, it recognized that young people need to be protected from flavored tobacco products, including menthol cigarettes, and that those products disproportionately affect minority communities.

79. Specifically, the Ordinance acknowledged that 85% of African American smokers and 36% of LGBTQ smokers use menthol cigarettes.

80. This behavior arose because of targeted marketing practices.

81. In order to give tobacco retailers a chance to acclimate themselves to the City's new tobacco laws, the Ordinance provided that the ban on flavored tobacco products would not become effective until January 1, 2024.

82. Pursuant to this new Ordinance, Columbus Public Health noted that effective April 1, 2023, the City would increase civil fines for violations.

83. Specifically, Columbus Public Health noted that a fine for a first offense would be \$1,000, a second violation fine would be \$5,000, and a third violation would result in a \$10,000 fine and a license revocation.

84. The Ordinance authorized the Columbus Board of Health to promulgate rules and regulations to carry out its purpose and intent, which is to protect the public health, safety and welfare.

85. The Board of Health subsequently promulgated rules to amend Chapter 248 of the Columbus City Health Code, the Columbus Licensing Program, to its current form. A true and accurate copy the current version of Chapter 248 of the Columbus City Health Code is attached to this Complaint as Exh. D.

The City of Bexley

86. On March 7, 2023, the Bexley City Council passed Ordinance Number 48-22. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. E.

87. Ordinance 48-22 enacted Chapter 837 of the Codified Ordinances of the City of Bexley, thereby establishing the City's Tobacco Retail Licensing Program and associated regulations (hereinafter the "Bexley Licensing Program").

88. The purpose of the Bexley Licensing Program is "to ensure that retailers comply with federal, state, and local tobacco control laws and business standards in order to protect the health, safety, and welfare of [its] residents." Section 837.01 of the Codified Ordinances of the City of Bexley.

89. The Bexley Licensing Program requires that every tobacco retailer in the City obtain and display at all times a Tobacco Retail License (TRL) Certificate of Compliance issued by Franklin County Public Health in order to conduct such retail business inside the city. Section 837.03.

90. The Bexley Licensing Program prohibits tobacco retailers from selling permitted tobacco products inside the city unless they have obtained a valid TRL. Section 837.03.

91. TRL licensees are also prohibited from selling tobacco products to persons under the age of 21 as well as flavored tobacco products to individuals of any age. Section 837.04(a), (d).

92. In most circumstances, TRL licensees must conduct age verification before distributing any tobacco products. Section 837.04(b)

93. TRL licensees must post, in an obvious manner, at all locations at which such products are to be sold written notice that states, “No person under the age of 21 may be sold nicotine or tobacco products, including electronic smoking devices.” Section 837.04(c).

94. Chapter 837 also regulates tobacco retailers in selling or distributing tobacco products through self service displays (e.g., a vending machine). Section 837.04(f).

95. Chapter 837 also requires tobacco products be sold in an in-person, over-the-counter sales transaction rather than, for example, over the internet or by phone. Section 837.04(e).

96. TRLs must be renewed annually. Section 837.03(i).

97. With certain exceptions, TRL licensees cannot locate their establishment within 1,000 feet of a youth-oriented facility. Section 837.06.

98. Franklin County Public Health conducts compliance checks of tobacco retail establishments. Section 837.08.

99. The results of compliance checks are publically available. Section 837.08.

100. Ordinance 48-22 established a civil penalty regime for violations that includes the issuance of fines and the denial, suspension, or revocation of the TRL. Sections 837.03 and .09.

The City of Cincinnati

101. The City of Cincinnati regulates tobacco and tobacco related products in various ways, and it has done so for decades.

102. In 1994, Cincinnati City Council passed Ordinance Number 192-1994. A true and accurate copy of Ordinance 192-1994 is attached to this Complaint as Exh. F.

103. Ordinance 192-1994 amended Sections 895-11 and 895-99 of the Cincinnati Municipal Code to prohibit the advertising of tobacco products via an outdoor advertising sign.

104. The changes made through Ordinance 192-1994 were designed “to limit, to the greatest possible degree, the illegal sale to and use by minors of tobacco products in violation of state law * * * .” Exh. F at cl. 1.

105. That same legislative session, City Council also passed Ordinance Number 193-1994. A true and accurate copy of Ordinance 193-1994 is attached to this Complaint as Exh. G.

106. Ordinance Number 193-1994 enacted Chapter 850 of the Municipal Code to regulate the advertisement of tobacco products on city sidewalks, streets, and highways, and on public vehicles and buses occupying the same.

107. In 1995, City Council then passed Ordinance Number 287-1995. A true and accurate copy of Ordinance 287-1995 is attached to this Complaint as Exh. H.

108. Ordinance 287-1995 enacted Chapter 609 of the Municipal Code to (among other things) prohibit the sale or distribution of tobacco products to minor children under the age of 18.

109. Then, in 2018, City Council passed Ordinance Number 363-2018 to amend Chapter 609. A true and accurate copy of Ordinance 363-2018 is attached to this Complaint as Exh. I.

110. Ordinance 363-2018 notably amended Chapter 609 to increase the legal age related to the sale of tobacco products inside city limits from 18 to 21. Section 609-3.

111. Thus, the City of Cincinnati banned the sale of tobacco to individuals under the age of 21 several before the State decided to do so.

112. Ordinance 363-2018 also amended Chapter 609 to put in place the City's Tobacco Retailer Licensing program ("Cincinnati Licensing Program").

113. Under the Cincinnati Licensing Program, tobacco retailers are prohibited from selling or otherwise distributing tobacco products without a valid license issued by the board of health to do so. Section 609-9 of the Cincinnati Municipal Code.

114. Ordinance 363-2018 set forth a civil penalty regime for violations. *Id.* at Section 609-99.

115. City Council later passed Ordinance Number 10-2019 to authorize the City Manager to apply for, accept, and appropriate funds to be used by the Cincinnati Health Department to develop and implement the Cincinnati Licensing Program. A true and accurate copy of Ordinance 10-2019 is attached to this Complaint as Exh. J.

116. Lastly, in 2012, the City Council passed Ordinance Number 16-2012. A true and accurate copy of Ordinance 16-2012 is attached to this Complaint as Exh. K.

117. Ordinance 16-2012 established Interim Development Control District Number 66, which was an area near to the city's then-new casino development.

118. By establishing an Interim Development Control District for the area, Ordinance 16-2012 provided a temporary review and study period to protect the public interest prior to the adoption of changes to the City's Zoning Code allowing for certain uses of property, including the retail sale of tobacco, in the area.

The City of Cleveland

119. The City of Cleveland regulates the distribution of cigarettes within the city in various ways.

120. In 1990, Cleveland City Council passed Ordinance Number 223-90 to enact Section 629.08 of the Codified Ordinances of the City of Cleveland. A true and accurate copy of Ordinance 223-90 is attached to this Complaint as Exh. L.

121. Section 629.08 prohibits the distribution of tobacco products “at no charge * * * in or upon any sidewalk, street or public park.”

122. A violation of Section 629.08 is a misdemeanor.

123. More recently, in 2015, Cleveland City Council passed Ordinance Number 737-15 to enact Section 607.15 of the Codified Ordinances of the City of Cleveland. A true and accurate copy of Ordinance 737-15 is attached to this Complaint as Exh. M.

124. Among other things, Section 607.15 prohibits the distribution of cigarettes, other tobacco products, and alternative nicotine products to minor children under the age of 18.

125. A violation of Section 607.15 is a misdemeanor.

126. Relatedly, in 2010 Cleveland City Council also passed Ordinance Number 1512-10 to enact Section 203.10 of the Codified Ordinances of the City of Cleveland. A true and accurate copy of Ordinance 1512-10 is attached to this Complaint as Exh. N.

127. Section 203.10 prohibits the distributing of cigarettes in a quantity smaller than as originally packaged by the manufacturer.

128. Doing so constitutes a nuisance injurious to the public health.

129. Section 203.10 permits authorized city officers and employees, including the Commissioner on Environmental Health, to impose misdemeanor penalties on the violator.

130. In addition to the distribution of tobacco and related products, the City has also banned smoking on city property through Chapter 235 of its Codified Ordinances.

131. For example, in 2011, Cleveland City Council passed Ordinance Number 473-11 to enact Section 235.02. A true and accurate copy of Ordinance 473-11 is attached to this Complaint as Exh. O.

132. Section 235.02 prohibits smoking in areas within 150 feet of entrances and exits of city places of employment, except as it affects real property owned privately or as is otherwise permitted by R.C. Chapter 3794.

133. Further, in 2014, Cleveland City Council passed Ordinance Number 695-14 regarding Section 235.01 of the Codified Ordinances. A true and accurate copy of Ordinance 695-14 is attached to this Complaint as Exh. P.

134. Under Section 235.01, the City declared pursuant to R.C. 3794.05 that any outdoor area owned or controlled by it is a nonsmoking place, unless that area otherwise qualifies as a nonsmoking place under R.C. Chapter 3794 or it is a specifically designated as a smoking place by the City Director of Public Works.

135. Section 235.01 also requires the Directors of Public Health or Public Works to place “No Smoking” and smoking signs in an obvious manner at all entrances and exits to outdoors areas.

136. Further, Section 235.01 requires individuals to stop smoking in nonsmoking place when requested to do so by the Director of Public Health, or their designee, or other authorized city officers or employees.

137. Additionally, in 2015, Cleveland City Council passed Ordinance Number 1233-15, which renders any violation of Chapter 235 a nuisance injurious to the public health. Section 235.99(a).

138. A true and accurate copy of Ordinance 1233-15 is attached to this Complaint as Exh. Q.

139. Certain violations of Chapter 235 may result in a civil penalty. Section 235.99(b).

140. Finally, through its zoning code, the City's specifies where hookah and vapor lounges may be located in the city.

141. In 2017, City Council passed Ordinance Number 1009-17 to enact Section 343.11 of the Codified Ordinances. A true and accurate copy of Ordinance 1009-17 is attached to this Complaint as Exh. R.

142. Among other things, Section 343.11 allows hookah and vapor lounges to be located in areas zoned as a General Retail Business District.

143. In addition to those tobacco regulations now existing, Cleveland City Council has also introduced additional tobacco legislation. However, the passage of R.C. 9.681 has since chilled any further action in this area.

The City of Dublin

144. In November 2004, the Dublin City Council passed Ordinance Number 52-04. A true and accurate copy of Ordinance 52-04 is attached to this Complaint as Exh. S.

145. Ordinance Number 52-04 enacted and amended Chapter 94 of the Dublin Code to prohibit smoking in public places and places of employment. Sections 94.10 through 94.17 of the Dublin Code.

146. A violation of Chapter 94 is a misdemeanor. Section 94.99.

147. Then, in December of 2017, City Council passed Ordinance Number 24-17. A true and accurate copy of Ordinance 24-17 is attached to this Complaint as Exh. T.

148. Ordinance 24-17 recognized that “every year tobacco products lead to the deaths of nearly one-half million Americans and drain more than \$268 billion in directly related healthcare and lost productivity costs * * * .” Exh. T at “Whereas” cl. 1.

149. Pointing to a “white paper” published in 2015 by The Ohio State University College of Public Health, Ordinance 24-17 also noted that “nearly all adult smokers began smoking before the age of 18, while very few smokers start smoking after the age of 21 * * * .” *Id.* at “Whereas” cl. 2.

150. Along those same lines, it noted that “raising the age for tobacco sales in the City of Dublin would lessen the accessibility of tobacco to minors and further the City’s interest in furthering the health, safety, and general welfare of the residents of the City of Dublin * * * .” *Id.* at “Whereas” cl. 6.

151. Accordingly, Ordinance 24-17 (among other things) prohibited the sale and distribution of tobacco products, other tobacco products, or alternative nicotine products to persons under the age of 21 under local law. Section 135.17(A)(2)(g).

152. Section 135.17 of the Dublin Code generally mirrors sections 2927.02, .021, .022, .023, and .024 of the Ohio Revised Code—that is, the State’s criminal laws pertaining to tobacco products.

153. Section 135.17(A) generally mirrors R.C. 2927.02; however, the City of Dublin banned the sale of these products to individuals under the age of 21 years before the state decided to do so.

154. Section 135.17(B) generally mirrors R.C. 2927.021 and regulates, as matter of local law, the use of a transaction scan to check the validity of a driver’s or commercial driver’s license

or identification card prior to the sale of cigarettes, other tobacco products, or alternative nicotine products.

155. Section 135.17(C) generally mirrors R.C. 2927.022 and sets forth an affirmative defense to a charge under Section 135.17(A).

156. Section 135.17(D) generally mirrors R.C. 2927.023 and regulates, as matter of local law, the shipment of tobacco products into the city.

157. Ordinance 24-17 also added Sections 94.20 through 94.24 to the Dublin Code, thereby establishing the City’s Tobacco And Alternative Nicotine Product Retailer Licensing Program (hereinafter the “Dublin Licensing Program”).

158. The City thus became “a leader in joining Franklin County Public Health to support a licensing program” inside its city limits. Exh. T at “Whereas” cl. 8.

159. The Dublin Licensing Program requires that every retailer of tobacco products and alternative tobacco devices in the City obtain a retail license to conduct such retail business inside the city. Section 94.21 of the Dublin Code. *See also* Section 135.17(E).

160. Licensees are also specifically prohibited from selling tobacco products or alternative nicotine devises in violation of Section 135.17 of the Code, for example, by selling to persons under the age of 21. Section 94.21(B).

161. TRLs must be renewed annually. *Id.* at (D).

162. Ordinance 24-17 authorized the City Manager to contract with Franklin County Public Health to act as the licensing agent for the Dublin Licensing Program. Exh. X at Section 3.

163. Both Franklin County Public Health and the City have authority to enforce the Dublin Licensing Program. Section 94.23(A)(1).

164. Both Franklin County Public Health and the City may conduct inspections of tobacco retail establishments to ensure compliance with applicable provisions. *Id.* at (A)(2).

165. Ordinance 24-17 established a civil penalty regime for violations that includes issuance of fines and the denial, suspension, or revocation of a license. *See generally* Sections 94.22 through and .24.

The City of Gahanna

166. On December 18, 2023, Gahanna City Council passed Ordinance Number ORD-0071-2023. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. U.

167. Ordinance ORD-0071-2023 adopted Chapter 737 of the Gahanna Codified Ordinances, thereby establishing the City's Tobacco Product Sales Licensing Program (the "Gahanna Licensing Program").

168. Ordinance ORD-0071-2023 took effect thirty days following the Mayor's signature.

169. The Gahanna Licensing Program was, in part, a response to the fact that "after decades of decline in cigarette smoking rates, we [the City] have seen a dramatic rise in the use of e-cigarettes by children and teens leading to a new generation of tobacco products addicting a new generation of users to tobacco and nicotine * * * ." Exh. U at "Whereas" cl. 1.

170. The Gahanna Licensing Program requires that every tobacco retailer in the City obtain and display at all times a Tobacco Retail License (TRL) issued by Franklin County Public Health in order to conduct such retail business inside the city. Section 737.02, .04.

171. The Gahanna Licensing Program prohibits tobacco retailers from selling permitted tobacco products inside the city unless they have obtained a valid TRL. Section 737.04.

172. In most circumstances, TRL licensees must conduct age verification before distributing any tobacco products. Section 737.02(B).

173. TRL licensees must also post, in an obvious manner, at all locations at which such products are to be sold written notice of the underage-sale prohibitions. Sections 737.02(B).

174. TRLs must be renewed annually. Section 737.04.

175. TRL licensees cannot locate their establishment within 1,000 feet of a youth-oriented facility and of another tobacco retailer. Section 737.08(A)-(B).

176. Chapter 737 prohibits the sale of cigarettes outside their original packaging and in packaging containing fewer than 20 cigarettes. Section 737.06.

177. Chapter 737 limits the total number of tobacco retailer licenses within the City not to exceed 26. Section 737.09(A).

178. The Mayor of Gahanna, or their designee, may seek the approval of the Gahanna City Council to authorize additional licenses. Section 737.09(C).

179. Franklin County Public Health conducts compliance checks of tobacco retail establishments. Section 737.11.

180. The results of compliance checks are publically available. *Id.*

181. Chapter 737 also generally prohibits the sale of tobacco products to persons under the age of 21. Section 737.03(A).

182. Ordinance ORD-0071-2023 sets forth a civil penalty regime for violations that includes the issuance of fines and the denial, suspension, or revocation of a TRL. Section 737.11.

The City of Grandview Heights

183. On September 5, 2023, the Grandview Heights City Council passed Ordinance Number 2023-22. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. V.

184. Ordinance 2023-22 amended and adopted new provisions of Chapter 523 of the Codified Ordinances of the City of Grandview Heights to ban the sale of flavored tobacco products and to establish the City’s Tobacco Retail Licensing Program (hereinafter the “Grandview Heights Licensing Program”).

185. Ordinance 2023-22 took effect on January 1, 2024.

186. The Grandview Heights Licensing Program was, in part, a response to the “dramatic rise in the use of e-cigarettes by youths, and an increase in new formats of tobacco products intended to entice and addict a new generation of users to tobacco and nicotine products, with e-cigarette flavors with names like Cotton Candy, Bubble Gum, Banana Smash and Mango Ice * * * .” Exh. V at “Whereas” cl. 2.

187. The Grandview Heights Licensing Program requires that every tobacco retailer in the City obtain and display at all times a Tobacco Retail License (TRL) issued by Franklin County Public Health in order to conduct such retail business inside the city. Section 523.10.

188. The Grandview Heights Licensing Program prohibits tobacco retailers from selling permitted tobacco products inside the city unless they have obtained a valid TRL. Section 523.10(b).

189. TRL licensees are also prohibited from selling and otherwise distributing tobacco products to persons under the age of 21 as well as flavored tobacco products to individuals of any age. Section 523.12(a)(1), (a)(4).

190. In most circumstances, TRL licensees must conduct age verification before distributing any tobacco products. Section 523.12(a)(3)

191. TRL licensees they also must post, in an obvious manner, at all locations at which such products are to be sold written notice of the underage-sale prohibitions. Section 523.12(a)(2).

192. TRLs must be renewed annually. Section 523.10(g).

193. TRL licensees cannot locate their establishment within 1,000 feet of a youth-oriented facility and of another tobacco retailer. Section 523.10(h)(1)-(2).

194. Chapter 523 also regulates tobacco retailers in selling or distributing tobacco products through, for example, a vending machine. Section 523.12(b).

195. Chapter 523 prohibits the sale of cigarettes outside of their original packaging and in packaging containing fewer than 20 cigarettes. Section 523.14.

196. Chapter 523 limits the total number of tobacco retailer licenses within the City not to exceed four, which was the number of retailers in operation at the time of passage of the chapter. Section 523.10(j)(1).

197. A revocation of any of the four TRLs would cause the number of available licenses to decrease by the quantity of one. Section 523.10(j)(1), (m)(7).

198. Franklin County Public Health conducts compliance checks of tobacco retail establishments. Section 523.09.

199. The results of compliance checks are publically available. *Id.*

200. A violation of Sections 523.10 and 523.12 of the Codified Ordinances of the City of Grandview Heights is a misdemeanor.

201. A second violation of Section 523.10 within any 36-month period may result in a TRL being revoked or not renewed.

The City of Heath

202. In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act (hereinafter “The TCA”), codified as 21 U.S.C. 387 et seq., to amend the Federal Food, Drug, and Cosmetic Act. *Vapor Technology Assn. v. United States FDA*, 977 F.3d 496, 498 (6th Cir.2020), citing P.L. 111-31, 123 Stat. 1776.

203. The TCA provided the Secretary of Health and Human Services certain regulatory authority over “tobacco products.” *Id.*; 21 U.S.C. 387a(a).

204. The Secretary “carries out this [regulatory] responsibility through the” U.S. Food and Drug Administration (FDA). *Vapor Technology Assn.* at 498, citing 21 U.S.C. 393(d)(2).

205. The TCA is applicable to “cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the Secretary by regulation deems to be subject to” it. *Id.*, citing 21 U.S.C. 387a(b).

206. In 2016, the FDA promulgated the “Deeming Rule,” which “deems all products meeting the statutory definition of ‘tobacco product’ [in 21 U.S.C. 321(rr)], except accessories of the newly deemed tobacco products, to be subject to FDA’s tobacco product authorities under” 21 U.S.C. 387 through 387u. 81 Fed.Reg. 28976; *Vapor Technology Assn.* at 498, citing 81 Fed.Reg. 28974, 28982-84.

207. FDA further determined that electronic nicotine delivery systems (ENDS), which include “e-cigarettes, ehookah, e-cigars, vape pens, advanced refillable personal vaporizers, and electronic pipes,” are “tobacco products” under 21 U.S.C. 321(rr). 81 Fed.Reg. 28976; *Vapor Technology Assn.* at 498 and fn.1, citing 81 Fed.Reg. 29028.

208. Because the definition includes ENDS, ENDS are required to undergo premarket authorization under 21 U.S.C 387j. *See* 81 Fed.Reg. 28976-79.

209. As of January of 2020, however, no ENDS product “ha[d] been authorized by the FDA.” Thus, “all ENDS products [then] on the market [were] considered illegally marketed.”

<https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.

210. Between January 2020 and February of 2024, the FDA only authorized the “marketing of 45 products, including 23 tobacco-flavored e-cigarette products and devices.”

<https://www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders> (accessed Feb. 27, 2024).

211. Yet, ENDS continue to be sold and used at alarming rates, including by young people in what has been classified as “an ‘epidemic’ of youth use.” <https://www.fda.gov/tobacco-products/products-ingredients-components/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends#Youth%20Use%20and%20Prevention%C2%A0>

(accessed Feb. 27, 2024).

212. As the results of ODH’s 2019 Ohio Youth Risk Behavior/Youth Tobacco Survey confirmed then, Ohio is within the community affected by this epidemic. *See generally* Exh. A.

213. ENDS continue to expose people—including children—to a number of health and safety risks. [https://www.fda.gov/tobacco-products/products-ingredients-components/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-](https://www.fda.gov/tobacco-products/products-ingredients-components/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends#Youth%20Use%20and%20Prevention%C2%A0)

[ends#Youth%20Use%20and%20Prevention%C2%A0](https://www.fda.gov/tobacco-products/products-ingredients-components/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends#Youth%20Use%20and%20Prevention%C2%A0).

214. In fact, in August of 2023 Ohio Attorney General Dave Yost joined 33 other state attorneys general to urge the FDA to do more to protect children from the harms caused by certain ENDS, specifically “child-friendly flavored disposable” products. <https://ncdoj.gov/wp-content/uploads/2023/08/FDA-Center-for-Tobacco-Products-Comment-Letter-FINAL.pdf>

215. On September 18, 2023, the Heath City Council passed and the Mayor of Heath approved Ordinance Number 72-2023. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. W.

216. Ordinance 72-2023 enacted, renumbered, and amended certain sections of the Codified Ordinances of the City of Heath to regulate within the City the marketing of cartridge-based ENDS products and all other ENDS products that have yet to obtain premarket authorization by the FDA (hereinafter “unauthorized ENDS”). Specifically, it enacted new Sections 521.16, 521.17, and 521.18; renumbered existing Sections 521.16 and 521.17 as Sections 521.19 and 521.20, respectively; and amended Section 521.99 of the City’s Codified Ordinances.

217. Section 521.16, which is a definitional section, and Section 521.17 prohibit the marketing of unauthorized ENDS within the City subject to penalties according to Section 521.99.

218. A repeat violator of Section 521.17 may be charged with a misdemeanor. Section 521.99(d).

219. Upon the report of a first alleged violation of Section 521.17, the Licking County Board of Health issues a warning letter to the alleged violator. Section 521.99(c).

220. Once a warning letter has been issued, a subsequent violation is chargeable as a misdemeanor. Section 521.99(c)-(d). The first offense following the warning letter is a minor misdemeanor, a second offense is a misdemeanor of the fourth degree, and a third and any subsequent offense is a misdemeanor of the third degree. Section 521.99(d).

221. The Licking County Board of Health of Heath has the authority to enforce the provisions. Section 521.19.

222. Further, the Licking County Board of Heath (and its designee(s)) and the mayor (and their designee(s)) have concurrent jurisdiction to enforce the provisions. Section 521.19.

223. The Licking County Board of Heath also has authority to conduct annual inspections of marketers of ENDS products to ensure compliance with these provisions. Section 521.18.

224. Finally, the provisions are subject to severability. Section 521.20.

The City of Hilliard

225. In November of 2017, the Hilliard City Council passed Ordinance Number 17-21. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. X.

226. Ordinance 17-21 enacted Chapter 543 of the Codified Ordinances of the City of Hilliard.

227. Chapter 543 prohibits persons from smoking and/or using tobacco products and electronic cigarettes at public parks leased or owned by the city as well as on the premises of all city-owned buildings. *See* Section 543.02-.03.

228. A violation of this prohibition is a misdemeanor. Section 543.99.

229. A first offense is a minor misdemeanor carrying a fine up of to \$150. *Id.*

230. Any subsequent offense is an unclassified misdemeanor carrying a fine of up to \$250. *Id.*

231. The purpose of this prohibition is to protect “the health, safety and general welfare of the City [of Hilliard] and its residents of all ages.” Section 543.01.

232. On July 11, 2022, the Hilliard City Council passed Ordinance Number 22-21. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. Y.

233. Ordinance 22-21 amended Section 537.16 and enacted Section 537.161, 537.162, and 539.07 of the Codified Ordinances of the City of Hilliard regarding the sale or other

distribution of tobacco products, alternative nicotine products, and electronic smoking devices to persons under the age of 21.

234. Section 537.16 of the Codified Ordinances of the City of Hilliard generally mirrors sections 2927.02, .021, .022, .023, and .024 of the Ohio Revised Code—that is, the State’s existing criminal laws pertaining to tobacco products.

235. Section 537.16(a) generally mirrors R.C. 2927.02 and regulates, as a matter of local law, the distribution of cigarettes, other tobacco products, alternative nicotine products, and papers to roll cigarettes.

236. Section 537.16(b) generally mirrors R.C. 2927.021 and regulates, as matter of local law, the use of a transaction scan to check the validity of a driver’s or commercial driver’s license or identification card prior to the sale of cigarettes, other tobacco products, or alternative nicotine products.

237. Section 537.16(c) generally mirrors R.C. 2927.022 and sets forth an affirmative defense to a charge under Section 537.18(a).

238. Section 537.16(d) generally mirrors R.C. 2927.023 and regulates, as matter of local law, the shipment of tobacco products into the city.

239. Section 537.16(e) generally mirrors R.C. 2927.024 and prohibits, as matter of local law, the furnishing of false information for the purpose of obtaining tobacco products.

240. Section 537.161 of the Codified Ordinances of the City of Hilliard more generally provides an affirmative defense to any charge under Section 537.16.

241. Section 537.162 of the Codified Ordinances of the City of Hilliard prohibits an adult under the age of 21 from possessing, using, purchasing, receiving, or furnishing false information to obtain tobacco products or electronic smoking devices.

242. A violation of Section 537.162 is a misdemeanor. Section 537.162(d).

243. Section 539.07 of the Codified Ordinances of the City of Hilliard prohibits a child from possessing, using, purchasing, or receiving cigarettes, other tobacco, alternative nicotine products, or electronic smoking devices.

244. If a child violates Section 539.07, a juvenile court may require the child to attend a youth smoking education or other smoking treatment program approved by the court; impose a fine up to \$100; and/or require the child to perform up to 25 hours of community service. Section 539.07(f).

245. Most recently, on October 10, 2022, the Hilliard City Council passed Ordinance Number 22-32. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. Z.

246. Ordinance 22-32 enacted Chapter 757 of the Codified Ordinances of the City of Hilliard, thereby establishing the City's Tobacco Products Sales Licensing Program (hereinafter the "Hilliard Licensing Program").

247. In Ordinance 22-32, the City of Hilliard reaffirmed its commitment and dedication "to promoting and supporting the health and wellbeing of its residents." Exh. Z at "Whereas" cl. 1.

248. The Hilliard Licensing Program requires that every tobacco retailer in the City obtain and display at all times a Tobacco Retail License (TRL) Certificate of Compliance issued by Franklin County Public Health in order to conduct such retail business inside the city. Section 757.02 of the Hilliard Codified Ordinances.

249. The Hilliard Licensing Program prohibits tobacco retailers from selling tobacco products inside the city unless they have obtained a valid TRL. Section 757.02(b).

250. The Hilliard Licensing Program requires that Franklin County Public Health issue or renew a TRL unless certain findings are made. Section 757.04.

251. The Hilliard Licensing Program also sets forth requirements for TRL licensees. Section 757.06.

252. TRL licensees are prohibited from giving, selling, or offering to sell tobacco products to persons under the age of 21 and from selling or furnishing tobacco products by any means prohibited by other federal, state, or local law. Section 757.06(a) and (d).

253. In most circumstances, TRL licensees must also conduct age verification before distributing tobacco products. Section 757.06(b).

254. TRL licensees must also post, in an obvious manner, written notice that states, “This Establishment shall not sell nicotine or tobacco products, including electronic Smoking Devices to person under the age of 21,” and includes the telephone number to report a violation, at all locations at which such products are sold. Section 757.06(c).

255. With certain exceptions, TRL licensees cannot locate their establishment within 1,000 feet of a youth-oriented facility. Section 757.06(e).

256. TRLs must be renewed annually. Section 757.05.

257. Franklin County Public Health must and the City may conduct compliance checks of tobacco retail establishments to ensure compliance with these and all other applicable provisions. Section 757.07. *See also* Section 757.07(j).

258. The results of compliance checks are publically available. Section 757.07(d).

259. Ordinance 22-32 established a civil penalty regime for violations that includes the issuance of fines and the denial, suspension, or revocation of a TRL. Sections 757.08 and .99.

260. Ordinance 22-32 also amended Chapter 190 pertaining to the tobacco retail license fee, which is set at \$500.00.

The City of Oxford

261. On August 1, 2023, Oxford City Council passed Ordinance Numbers 3730 and 3731.

262. Ordinance 3730 enacted Chapter 744 of the Codified Ordinances of the City of Oxford, thereby establishing the City's Tobacco Retailer License Program for the sale of tobacco and paraphernalia products inside the city (hereinafter the "Oxford Licensing Program"). A true and accurate copy of that Ordinance is attached to this Complaint as Exh. AA.

263. The Oxford Licensing Program was, in part, designed to "ensure proper training and enforcement of the restrictions on the sales of tobacco and nicotine-containing products to those under the age of 21." Exh. AA, Ordinance 3730, "Whereas" cl. 5.

264. The Oxford Licensing Program requires that every tobacco retailer in the City obtain and display at all times a Tobacco Retailer License (TRL) issued by the City in order to conduct such retail business. Section 744.02.

265. The Oxford Licensing Program prohibits tobacco retailers from selling permitted tobacco products inside the city unless they have obtained a valid TRL. *Id.*

266. Chapter 744 generally prohibits the sale of tobacco products to persons under the age of 21. Section 744.07(a).

267. Chapter 744 generally prohibits the distribution of samples of any tobacco and to a person of any age free of charge or at a nominal cost. Section 744.07(d).

268. TRL licensees must conduct age verification before distributing any tobacco products, and they must post, in an obvious manner, at all locations at which such products are to be sold written notice of the underage-sale prohibitions. Sections 744.07(b)-(c).

269. TRLs must be renewed annually. Section 744.02(c).

270. TRL licensees cannot locate their establishment within 500 feet of a youth-oriented facility. Section 744.06.

271. Chapter 744 limits the total number of tobacco retailer licenses available within the City to one for every 1,500 city residents, based on U.S. Census Bureau data. Section 744.05.

272. The City, or its authorized designee, conducts compliance checks of tobacco retail establishments. Section 744.08.

273. The results of compliance checks are publically available. *Id.* at (d).

274. Ordinance 3730 sets forth a civil penalty regime for violations that includes the issuance of fines and the denial, suspension, or revocation of a TRL. Section 744.10.

275. Ordinance Number 3731 amended Section 537.16 of the Codified Ordinances of the City of Oxford, including by relating it to Chapter 744 of the same. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. BB.

276. Section 537.16 prohibits the sale and general distribution within the city of tobacco products without a TRL and, more generally, of tobacco products to any person under the age of 21. Section 537.16(C).

277. A violation of Section 537.16 is a misdemeanor. Section 537.16(D).

278. Additionally, a violation of Section 537.16 constitutes a violation of Chapter 744 and subjects the violator to the penalties outlined therein. Section 537.16(F).

The City of Reynoldsburg

279. In December of 2017, the City of Reynoldsburg passed Ordinance Number 146-17.

A true and accurate copy of that Ordinance is attached to this Complaint as Exh. CC.

280. Ordinance 146-17 took effect thirty days following the Mayor's signature.

281. Ordinance 146-17 amended Section 971.15 of the Reynoldsburg Codified Ordinances to add division (j), which thereafter prohibited the use of tobacco and ENDS in city-owned parks and other outdoor facilities operated by the Reynoldsburg Parks and Recreation Department. Section 971.15(j) of the Reynoldsburg Codified Ordinances.

282. Ordinance 146-17 was part of the City's effort "to protect [its] youngest citizens from the dangers of secondhand smoke." Pamela Willis, Columbus Dispatch, *Signs designate tobacco-free zones in Reynoldsburg's city parks* (June 13, 2018), <https://www.dispatch.com/story/news/local/reynoldsburg/2018/06/11/signs-designate-tobacco-free-zones/11986453007/> (accessed Mar. 6, 2024).

283. Most recently, on January 23, 2023, the Reynoldsburg City Council passed and the Mayor approved Ordinance Number 04-2023. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. DD.

284. Ordinance 04-2023 took effect thirty days following the Mayor's signature.

285. Ordinance 04-2023 adopted Chapter 723 of the Reynoldsburg Codified Ordinances, thereby establishing the City's Tobacco Products Sales Licensing Program (hereinafter the "Reynoldsburg Licensing Program").

286. The Reynoldsburg Licensing Program was, in part, a response to the "dramatic increase in the use of electronic smoking devices and vaping products by persons under the age of

twenty-one (21), contributing to the addiction of a new generation of users to tobacco and nicotine * * * .” Exh. DD, Ordinance 04-2023 “Whereas” cl. 2.

287. The Reynoldsburg Licensing Program was designed, in part, “to promote better training and enforcement on the restrictions of underage sales of nicotine-containing products * * * .” *Id.* at “Whereas” cl. 4.

288. The Reynoldsburg Licensing Program requires that every tobacco retailer in the City obtain and display at all times a Tobacco Retail License (TRL) Certificate of Compliance issued by Franklin County Public Health in order to conduct such retail business inside the city. Section 723.03 of the Reynoldsburg Codified Ordinances.

289. The Reynoldsburg Licensing Program prohibits tobacco retailers from selling tobacco products inside the city unless they have obtained a valid TRL. Section 723.03(b).

290. The Reynoldsburg Licensing Program requires that Franklin County Public Health issue or renew a TRL unless certain findings are made. Section 723.07.

291. The Reynoldsburg Licensing Program also sets forth requirements for TRL licensees. Sections 723.09 and 723.13.

292. TRL licensees must post, in an obvious manner, within six feet of every register where tobacco products may be purchased and sold the TRL and a printed notice stating, “It is illegal for any person under the age of 21 to purchase tobacco products, including electronic cigarettes.” Section 723.09.

293. Further, TRL licensees are prohibited from giving, selling, or offering to sell tobacco products to persons under the age of 21 and from selling or furnishing tobacco products by any means prohibited by other federal, state, or local law. Section 723.13(a) and (d).

294. TRL licensees must also conduct age verification before distributing tobacco products, and they must post, in an obvious manner, written notice that states, ““This Establishment shall not sell tobacco products, including electronic smoking devices, to any person under the age of 21,” and includes the telephone number to report a violation, at all locations at which such products are sold. Section 723.13(b) and (c).

295. Lastly, with certain exceptions, TRL licensees cannot locate their establishment within 1,000 feet of a youth-oriented facility. Section 723.13(e).

296. TRLs must be renewed annually. Section 723.11 of the Reynoldsburg Codified Ordinances.

297. Franklin County Public Health must and the City may conduct compliance checks of tobacco retail establishments to ensure compliance with these and all other applicable provisions. Section 723.15. *See also* Section 723.99(j).

298. The results of compliance checks under Section 723.15 are publically available. Section 723.15(d).

299. Ordinance 04-2023 established a civil penalty regime for violations that includes issuance of fines and the denial, suspension, or revocation of a TRL. Sections 723.17 and .99.

The City of Upper Arlington

300. The City of Upper Arlington regulates the distribution to and possession by minors of various tobacco and related products.

301. Section 531.08 of the Codified Ordinances of the City of Upper Arlington prohibits the sale and distribution of cigarettes, tobacco products, e-cigarettes, and liquid nicotine to children under the age of 18.

302. A violation of Section 531.08 is a misdemeanor.

303. Section 531.09 of the Codified Ordinances of the City of Upper Arlington prohibits the possession of cigarettes, tobacco products, e-cigarettes, and liquid nicotine by children under the age of 18.

304. Upon a violation of Section 531.09, a juvenile court may require the child to attend a youth smoking education or other smoking treatment program approved by the court, or it may impose a fine up to \$100. Section 531.09(f).

305. Sections 531.08 and .09 of the Codified Ordinances of the City of Upper Arlington were most recently amended in 2015 by Ordinance Number 35-2015. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. EE.

306. The City of Upper Arlington also prohibits smoking and the use of smoking devices within its public outdoor spaces, including parks and playgrounds. Section 543.02(A)(20) of the Codified Ordinances of the City of Upper Arlington.

307. A violation of Section 543.02 is a misdemeanor.

308. Division (A)(20) was added to Section 543.02 by operation of Ordinance Number 27-2019. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. FF.

309. The Codified Ordinances of the City of Upper Arlington also prohibit, as a matter of local law, smoking inside public places, businesses, and places of employment. See generally Chapter 1580.

310. Among other requirements, Chapter 1580 requires “a proprietor of a public place or place of employment [to] take reasonable steps including, but not limited to, requesting individuals to cease smoking, to ensure that tobacco smoke, in an area directly or indirectly under the control of the proprietor, does not enter any area in which smoking is prohibited under this chapter through entrances, windows, ventilation systems, or other means.” Section 1580.02(C).

311. A violation of Chapter 1580 violations may be charged as a misdemeanor.

312. In addition to those tobacco regulations now existing, Upper Arlington City Council has also considered passing additional tobacco legislation regarding flavored tobacco. The passage of R.C. 9.681, however, has since chilled any further action in this area.

The City of Whitehall

313. On January 17, 2023, the Whitehall City Council passed Ordinance Number 003-2023, adopting Chapter 741 of the City of Whitehall Codified Ordinances. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. GG.

314. Chapter 741 sets out the City's Tobacco Product Sales Licensing Program (the "Whitehall Licensing Program").

315. Ordinance 003-2023 recognized that "after decades of decline in cigarette smoking rates we [the City] have seen a recent dramatic rise in the use of e-cigarettes by children and teens leading to a new generation of tobacco products addicting a new generation of users to tobacco and nicotine * * * ." Exh. GG at "Whereas" cl. 1.

316. Chapter 741 also generally prohibits the sale of tobacco products to persons under the age of 21. Section 741.03(a).

317. The Whitehall Licensing Program requires that every tobacco retailer in the City obtain and display at all times a Tobacco Retail License (TRL) issued by Franklin County Public Health in order to conduct such retail business inside the city. Section 741.02, .04.

318. The Whitehall Licensing Program prohibits tobacco retailers from selling permitted tobacco products inside the city unless they have obtained a valid TRL. Section 741.04.

319. In most circumstances, TRL licensees must conduct age verification before distributing tobacco products. Section 741.03(b).

320. TRL licensees must also post, in an obvious manner, at all locations at which such products are to be sold written notice of the underage-sale prohibitions. Sections 741.02(b).

321. TRLs must be renewed annually. Section 741.04.

322. TRL licensees cannot locate their establishment within 1,000 feet of a youth-oriented facility and of another tobacco retailer. Section 741.09(a)-(b).

323. Chapter 741 regulates tobacco retailers in selling or distributing tobacco products through a vending machine. Section 741.06.

324. Chapter 741 also prohibits the sale of cigarettes outside of their original packaging and in packaging containing fewer than 20 cigarettes. Section 741.07.

325. Chapter 741 limits the total number of tobacco retailer licenses available within the City to one for every 685 city residents, based on U.S. Census Bureau data. Section 741.10(a).

326. The Mayor of Whitehall, or their designee, may authorize additional licenses. Section 741.10(c).

327. Franklin County Public Health conducts compliance checks of tobacco retail establishments. Section 741.12(a).

328. The results of compliance checks are publically available. *Id.*

329. Ordinance 003-2023 sets forth a civil penalty regime for violations that includes the issuance of fines and the denial, suspension, or revocation of a TRL. Section 741.12-.13.

The City of Worthington

330. In October of 2001, the Worthington City Council passed Ordinance Number 48-2001. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. HH.

331. Ordinance 48-2001 enacted Section 531.05 of the Codified Ordinances of the City of Worthington to prohibit the purchase or possession of tobacco products by persons under the age of eighteen.

332. The Worthington City Council believed “that stricter ordinances regulating the sale, use, and possession of cigarettes and other tobacco products by minors will have a significant impact on the number of underage people purchasing and/or using tobacco products.” Exh. HH at “Whereas” cl. 7.

333. If a child violates Section 531.05, a juvenile court may require the child to attend a youth smoking education or other smoking treatment program approved by the court and/or impose a fine up to \$100. Section 531.05(f).

334. Ordinance 48-2001 also amended Section 537.16 of the Codified Ordinances of the City of Worthington to prohibit the distribution of tobacco products to persons under the age of eighteen and regulating the use of vending machines for the sale of tobacco products.

335. A violation of Section 537.16 is a misdemeanor. Section 537.16(e).

336. In September of 2004, the Worthington City Council passed Ordinance Number 30-2004. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. II.

337. Ordinance Number 30-2004 enacted Chapter 527 to prohibit smoking in public places and places of employment.

338. A violation of Chapter 527 is a misdemeanor. Section 527.99(b).

339. In May of 2018, the Worthington City Council passed Ordinance Number 24-2018. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. JJ.

340. Ordinance 24-2018 enacted Chapter 765 of the Codified Ordinances of the City of Worthington to, among other things inside city limits, create a licensing regime related to the sale of tobacco and prohibit the sale of tobacco products to persons under the age of 21.

341. Chapter 765 includes sections that are civilly enforced and sections that are criminally enforced.

342. Ordinance 24-2018 identified that the City of Worthington had contracted with the Columbus Board of Health to provide public health services to the city and its residents. Exh. JJ at “Whereas” cl. 4.

343. Columbus Public Health administers and civilly enforces the licensing provisions of Chapter 765.

344. The Worthington Division of Police enforces the criminal provisions of Chapter 765.

345. In September of 2018, the Worthington City Council passed Ordinance Number 44-2018. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. KK.

346. Ordinance 44-2018 amended certain sections of Chapter 765 to make the chapter consistent with the then-existing provisions of the Columbus City Health Code. Exh. KK at “Whereas” cl. 3.

347. Most recently, on November 20, 2023, the Worthington City Council passed Ordinance Number 25-2023. A true and accurate copy of that Ordinance is attached to this Complaint as Exh. LL.

348. Ordinance 25-2023 amended section Chapter 765 of the Codified Ordinances of the City of Worthington to its present form and to make the chapter consistent with current provisions of the Columbus City Health Code.

349. Chapter 765 sets forth the City of Worthington’s tobacco retail licensing scheme (hereinafter “Worthington Licensing Program”).

350. Chapter 765 sets forth both civil and criminal penalties for violating the city’s Licensing Program. *See, .e.g,* Sections 765.03, .05, and .06 of the Codified Ordinances of the City of Worthington.

351. These civil penalties include a fine. Specifically, for a first violation, the fine increased to \$1,000, a second violation to \$5,000, and a third to \$10,000 as well as a license revocation. Section 765.05.

352. Civil penalties also include denial, suspension, or revocation of a retail license. Section 765.03.

353. In addition, under Section 765.06, it is a misdemeanor of the first degree for a tobacco retailer to, for example, distribute or sell tobacco products without a license to do so.

354. If convicted, a retailer with a prior conviction under sections 765.06 or 765.07 of the Codified Ordinances of the City of Worthington, former sections 2329.13 or 2329.14 of the Columbus City Code, or R.C. 2927.02, will also be denied a license for up to five years. Section 765.06(b).

355. Ordinance 24-2018 enacted Section 765.07 to (among other things) prohibit the distribution of tobacco products to persons under the age of 21 under local law.

356. Ordinance 25-2023 also amended Section 765.07 to prohibit the sale of flavored tobacco products to all persons inside city limits.

357. Under Section 765.07(a)(4), it is a misdemeanor to sell, give away, or distribution flavored tobacco products inside the city.

358. A first offense under Section 765.07 is a misdemeanor of the fourth degree. Section 765.07(c).

359. A subsequent offense is a misdemeanor of the third degree. Section 765.07(c).

360. Additionally, any violation is a misdemeanor of the third degree if the offender was previously convicted under Section 765.06 of the Codified Ordinances of the City of Worthington, former sections 2329.13 or 2329.14 of the Columbus City Code, or R.C. 2927.02. Section 765.07(c).

361. The amendments to Chapter 765 of the Codified Ordinances of the City of Worthington became effective January 1, 2024. However, fines or penalties were not imposed for any violation pertaining to the illegal sale or distribution of flavored tobacco products occurring on or before March 31, 2024.

The State's Response

362. Within two days of the City of Columbus passing Ordinance 3253-2022, the Ohio Senate's Ways and Means Committee amended HB 513.

363. HB 513, as originally introduced in the House, allowed a wholesaler to obtain a refund on excise taxes and other tobacco products for bad debts arising from the sale of these products.

364. However, the Senate Ways and Means Committee amended HB 513 to include a new section in the Ohio Revised Code.

365. The Amendment purported to add R.C. 9.681 to the Ohio Revised Code.

366. R.C. 9.681 stated the following:

Sec. 9.681. (A) As used in this section, "tobacco product" and "alternative nicotine product" have the same meanings as in section 2927.02 of the Revised Code.

(B) The regulation of tobacco products and alternative nicotine products is a matter of general statewide concern that requires statewide regulation. The state has adopted a comprehensive plan with respect to all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products. No political subdivision may enact, adopt, renew, maintain, enforce, or continue in existence any charter provision, ordinance, resolution, rule, or other measure that conflicts with or preempts any policy of the state regarding the regulation of tobacco products or alternative nicotine products, including, without limitation, by:

- (1) Setting or imposing standards, requirements, taxes, fees, assessments, or charges of any kind regarding tobacco products or alternative nicotine products that are the same as or similar to, that conflict with, that are different from, or that are in addition to, any standard, requirement, tax, fee, assessment, or other charge established or authorized by state law;
- (2) Lowering or raising an age requirement provided for in state law in connection with the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products or alternative nicotine products;
- (3) Prohibiting an employee eighteen years of age or older of a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products or alternative nicotine products from selling tobacco products or alternative nicotine products;
- (4) Prohibiting an employee eighteen years of age or older of a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products or alternative nicotine products from handling tobacco products or alternative nicotine products in sealed containers in connection with manufacturing, storage, warehousing, placement, stocking, bagging, loading, or unloading.

- (C) In addition to any other relief provided, the court shall award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, resolution, regulation, local law, or other action as being in conflict with this section.
- (D) The general assembly finds and declares that this section is part of a statewide and comprehensive legislative enactment regulating all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products. The general assembly further finds and declares that the imposition of tobacco product and alternative nicotine product regulation by any political subdivision is a matter of statewide concern and would be inconsistent with that statewide, comprehensive enactment. Therefore, regulation of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products is a matter of general statewide concern that requires uniform statewide regulation. By the enactment of this section, it is the intent of the general assembly to preempt political subdivisions from the regulation of tobacco products and alternative nicotine products.
- (E) This section does not prohibit a political subdivision from levying a tax expressly authorized by state law, including the taxes authorized under Chapters 5739. and 5741. or sections 5743.021, 5743.024, 5743.026, 5743.321, 5743.323, and 5743.324 of the Revised Code.

367. At the time the bill was passed, one newspaper wrote that it “broad-sides an ordinance Columbus City Council passed on Monday that bans the sale of flavored and menthol tobacco products.” <https://www.cleveland.com/open/2022/12/bill-blocking-cities-from-strict-tobacco-laws-passes-ohio-legislature.html>

368. The State’s own independent Legislative Services Commission pointed out that the bill “may be vulnerable to a challenge under the Home Rule Amendment to the Ohio Constitution,

which allows a municipal corporation 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 law.”

<https://www.legislature.ohio.gov/download?key=20105&format=pdf>

369. The overwhelming testimony in committee about this unconstitutional attempt to infringe on the right of municipalities to regulate tobacco was in opposition.

370. On December 13, 2022, the day after the City of Columbus passed Ordinance 3253-2022, representatives from the Campaign for Tobacco-Free Kids, the American Cancer Society Cancer Action Network, Preventing Tobacco Addiction Foundation, the American Heart Association, and the American Lung Association testified against the unconstitutional attempt to bar municipal regulation of tobacco.

371. Meghan Kissell, Regional Advocacy Director of the Campaign for Tobacco-Free Kids, testified that “Ohio has some of the worst tobacco use rates in the country.... In addition to this enormous health burden, tobacco use also imposes a major economic burden on society costing Ohio \$6.56 billion in annual health costs and \$8.04 billion in lost productivity due to smoking caused [or] related illness.”

372. She also informed the Senate Ways and Means Committee that 85% of youth e-cigarette users use flavored products and unless something is done, “259,000 of the youth alive today in Ohio will die early from tobacco-related disease. We must do everything we can at both the state and local level to prevent tobacco use among young people.”

373. She also explained that “often, the strongest, most effective tobacco control policies have originated at the local level.”

374. In fact, it was many local communities, including the City of Columbus, that prohibited the sale of tobacco or tobacco products to any individual under the age of 21 from purchasing tobacco or tobacco products well before the State did so.

375. She also testified that while “the effectiveness of local control of tobacco control policies is well-documented, so is the tobacco industry’s support for preemptive policies at the state level.”

376. She also noted that “in 2012, the Surgeon General found that the tobacco industry’s response to successful reductions in youth tobacco initiation and use have included more aggressive lobbying, including lobbying for preemption legislation to allow state laws to override more stringent local laws.”

377. A true and accurate copy of that testimony is attached to this Complaint as Exh. MM.

378. Leo Almeida, the Ohio Government Relations Director for the American Cancer Society Cancer Action Network also supplied testimony against the unconstitutional attempt to bar local regulation of tobacco.

379. He testified that local “control over matters designed to protect the public’s health has numerous benefits that are lost when local power is preempted.”

380. He also testified that “[w]hat local leaders are seeing today is something that should concern everyone. They are seeing an increase in youth using flavored tobacco products that Big Tobacco are directly marketing to them.”

381. He also testified that “[c]andy, fruit, mint and menthol flavorings in tobacco products are a promotional tool to lure new, young users, and are aggressively marketed with creative campaigns by tobacco companies. Products with flavors like cherry, grape, cotton candy,

and gummy bear are clearly not aimed at established, adult tobacco users and years of tobacco industry documents confirm the intended use of flavors to target youth. Furthermore, youth report that flavors are a leading reason they use tobacco products and perceive flavored products as less harmful.”

382. A true and accurate copy of his testimony is attached to this Complaint as Exh. NN.

383. Dr. Rob Crane, a retired Professor of Family Medicine at the Ohio State University and President of the Preventing Tobacco Addiction Foundation, also testified against the unconstitutional attempt to bar local regulation of tobacco and tobacco products.

384. Dr. Crane testified that it was local communities, including the City of Columbus, that passed an indoor smoking ban in 2004 and that such a ban was not implemented statewide until 2007, when Ohio voters approved the ban in a statewide vote on a citizen-led initiative.

385. Dr. Crane also testified that “Age 21 worked on the *supply* side, but the science showed that work on the *demand* side by taking the candy out of the addictive nicotine products is more effective. 300 cities and several states have already done so. After 6 months of consideration, Columbus passed an ordinance yesterday, and by the end of February, we expect at least 10 other City Councils will do the same.”

386. A true and accurate copy of Dr. Crane’s testimony is attached to this Complaint as Exh. OO.

387. Amanda Turner, the Executive Director of Tobacco 21, also testified against this unconstitutional attempt to bar local regulation of tobacco and tobacco products.

388. She testified that “[f]lavored tobacco products were created and designed to attract kids. The State of Ohio recently announced a multi-million dollar settlement with JUUL, one of the first e-cigarette companies to lure in kids with sweet, candy flavored vapes like raspberry,

marshmallow, Mango, watermelon bubblegum, mixed berry, and cotton candy. Now the market is saturated with cheaper, disposable devices in more than 15,000 unique flavors.”

389. She also testified that “[t]hese products are often sold with 5% nicotine, but we’re seeing that increase with product samples given out that are 6% nicotine. Nicotine is poison and especially dangerous for developing brains. Recent studies show that e-cigarettes can lead to lung damage and cardiovascular disease.”

390. A true and accurate copy of Amanda Turner’s testimony is attached to this Complaint as Exh. PP.

391. Dustin Holfinger, the state government relations director for the American Heart Association, also testified against the unconstitutional attempt to bar local regulation of tobacco.

392. He testified that “[l]ocal governments were the first to implement local solutions to protect citizens by passing tobacco 21 laws and smoke-free ordinances in the state. If this amendment is passed it will keep local communities from being able to innovate and adopt local solutions for local problems.”

393. He also noted that “[i]n 2019, 97% of youth e-cigarette users report using a flavored product in the past month, and 70% cite flavors as a key reason for their use.”

394. A true and accurate copy of Dustin Holfinger’s testimony is attached to this Complaint as Exh. QQ.

395. Finally, Ken Fletcher, the Director of Advocacy for the American Lung Association in Ohio, also supplied written testimony in opposition to the unconstitutional attempt to bar local regulation of tobacco and tobacco products.

396. In his testimony, he noted, “Ohio has taken positive steps to improve the health of people across the state, but often the strongest, most effective tobacco control policies have

originated at the local level. For example, before the state raised the age of tobacco sales to age 21, local communities led the way. Local communities continue to lead with implementing effective enforcement strategies of the law with strategies such as compliance checks with retailers and tobacco retail licensing programs.”

397. A true and accurate copy of Ken Fletcher’s testimony is attached to this Complaint as Exh. RR.

398. On January 5, 2023, Governor DeWine vetoed HB 513.

399. DeWine’s veto message stated:

A local government that bans flavored tobacco products, that are often marketed specifically to appeal to youth, may be doing so to discourage youth tobacco use. Nearly 81% of youth ages 12 to 17 who had ever used a tobacco product reported that the first product they used was flavored. A recent prevalence study on the use of tobacco products among middle and high school students showed that of those who reported they were currently using a tobacco product 72.8% of high school students and 59.6% of middle school students reported using flavored products. At least two-thirds of youth tobacco users report using tobacco products “because they come in flavors I like.” Flavors, including menthol, help mask the harshness of tobacco making it easier for kids to become addicted.

400. A true and accurate copy of that veto message is attached to this Complaint as Exh. SS.

The Ohio Department of Health Recognizes the Successes of Local Regulation of Tobacco

401. The Ohio Department of Health has recognized the importance of local regulation of tobacco and tobacco products.

402. For example, the Department’s website specifically states, “Fourteen cities in Ohio have adopted a Tobacco 21 policy. Through work by Ohio’s local health departments and districts,

Tobacco 21 has been proposed in additional municipalities in Ohio.” <https://odh.ohio.gov/know-our-programs/tobacco-use-prevention-and-cessation/data/ohio-tobacco-surveillance-system>

403. That same website has a list of “Number of People Impacted by T21.” *Id.*

404. The Department recognizes that the impact of Tobacco 21 is a local community driven impact. As such, it lists 36 different municipalities who have passed their own types of tobacco regulation and the website states that 2,993,401 people in the State have been impacted by Tobacco 21. *Id.*

405. The Ohio Department of Health includes a link for a Strategic Plan for a Tobacco Free Ohio, 2021-2025. <https://odh.ohio.gov/know-our-programs/tobacco-use-prevention-and-cessation/tobaccofreealliance/strategic-plan-tobacco-free-ohio-2021-2025>

406. The first objective and strategy that the Ohio Department of Health claims is necessary to prevent youth tobacco use is “[b]y 2025, increase the number of local jurisdictions in Ohio that have laws or regulations limiting the accessibility and availability of tobacco products for youth by 10% (baseline to be established by [Ohio Department of Health’s Tobacco Use Prevention and Cessation Program (ODH TUPCP)] by 2022).” *Id.* at 18.

407. The four points listed under this strategy are: (1) Deliver education tools and opportunities for local public health districts related to Tobacco Retail License and other tobacco control regulations; (2) Improve efforts to educate local county and city level officials on the benefits of Tobacco Retail License and other tobacco control measures; (3) Develop model policies and strategy documents for implementing local tobacco control policies; and (4) Strengthen inter-governmental ties at state and local levels to improve policy process and outcomes. *Id.*

408. The Ohio Department of Health also recognized that manufacturers of e-cigarettes were directly marketing their product to youths.

409. The Department stated, “E-cigarette manufacturers market their products in different ways. They market through price discounts, social media, at the point of sale, etc. E-cigarette companies try to market their products to kids by putting the products at eye level and by disguising the product with kid-friendly flavors and colorful, attractive advertising.”

<https://odh.ohio.gov/know-our-programs/tobacco-use-prevention-and-cessation/JUUL2/Juul>

410. In fact, the Department showed how the manufacturers of e-cigarettes designed their packaging to look like cereal and candy.

Cereal Treats Crunch



E-liquid



Food product

Cereal Treats Loopz



E-liquid



Food product

Cereal Treats Charms



E-liquid



Food product

Dripflavors Sour Apple Kiwi Gummy Salt



E-liquid



Food product

Cereal Treats Krispies



E-liquid



Food product

Dripflavors Strawberry Lemonade Salt



E-liquid



Food product

The General Assembly Continues Its Assault on Municipal Home Rule

411. Although the General Assembly failed to schedule a veto override vote on the Governor's veto of HB 513, it tried to take another path toward unconstitutionally banning municipal regulation of tobacco and tobacco products.

412. It placed a statutory amendment adding R.C. 9.681 into HB 33, the State's biennial budget.

413. That language reads as follows:

(A) As used in this section, "tobacco product" and "alternative nicotine product" have the same meanings as in section 2927.02 of the Revised Code.

(B) The regulation of tobacco products and alternative nicotine products is a matter of general statewide concern that requires statewide regulation. The state has adopted a comprehensive plan with respect to all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products. No political subdivision may enact, adopt, renew, maintain, enforce, or continue in existence any charter provision, ordinance, resolution, rule, or other measure that conflicts with or preempts any policy of the state regarding the regulation of tobacco products or alternative nicotine products, including, without limitation, by:

- (1) Setting or imposing standards, requirements, taxes, fees, assessments, or charges of any kind regarding tobacco products or alternative nicotine products that are the same as or similar to, that conflict with, that are different from, or that are in addition to, any standard, requirement, tax, fee, assessment, or other charge established or authorized by state law;
- (2) Lowering or raising an age requirement provided for in state law in connection with the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and

marketing of tobacco products or alternative nicotine products;

- (3) Prohibiting an employee eighteen years of age or older of a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products or alternative nicotine products from selling tobacco products or alternative nicotine products;
 - (4) Prohibiting an employee eighteen years of age or older of a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products or alternative nicotine products from handling tobacco products or alternative nicotine products in sealed containers in connection with manufacturing, storage, warehousing, placement, stocking, bagging, loading, or unloading.
- (C) Prohibiting an employee eighteen years of age or older of a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products or alternative nicotine products from handling tobacco products or alternative nicotine products in sealed containers in connection with manufacturing, storage, warehousing, placement, stocking, bagging, loading, or unloading.
- (D) The general assembly finds and declares that this section is part of a statewide and comprehensive legislative enactment regulating all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products. The general assembly further finds and declares that the imposition of tobacco product and alternative nicotine product regulation by any political subdivision is a matter of statewide concern and would be inconsistent with that statewide, comprehensive enactment. Therefore, regulation of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products is a matter of general statewide concern that requires uniform statewide regulation. By the enactment of this section, it is the intent of the general assembly to preempt political

subdivisions from the regulation of tobacco products and alternative nicotine products.

- (E) This section does not prohibit a political subdivision from levying a tax expressly authorized by state law, including the taxes authorized under Chapters 5739. and 5741. or sections 5743.021, 5743.024, 5743.026, 5743.321, 5743.323, and 5743.324 of the Revised Code.

414. On July 3, 2023, Governor DeWine again vetoed this language.

415. In his veto message, DeWine wrote:

This item prohibits the local regulation of tobacco products and alternative nicotine products, despite the fact that these products are known to be harmful to health. The U.S. Centers for Disease Control and Prevention estimates that approximately 480,000 Americans die from cigarette smoke each year. Tobacco and alternative nicotine products also have a direct impact on increasing health care costs for all Ohioans. Worse yet, the marketing of flavored tobacco products often targets children. In the absence of an effective and comprehensive statewide flavored tobacco ban (including menthol) – which is this administration’s preferred policy approach – local government bans are essential because they reduce access to flavored tobacco and nicotine alternative products and interrupt the cycle of addiction. The removal of local regulation would encourage youth nicotine addiction and immediately undo years of progress to improve public health, which is why a similar provision was previously vetoed. Therefore, the veto of this item is in the public interest.

416. On Wednesday, December 13, 2023, the House voted 60-31 to override the Governor’s veto.

417. The rationale provided by members of the General Assembly as to why it was necessary for the State to unconstitutionally interfere with the ability of municipalities to regulate tobacco were summed up by Rep. Jon Cross, who said, “In this holiday spirit, I cannot think of a better holiday gift than delivering this vote to the hardworking Ohioans who need us to keep this

place open for business.” <https://www.cincinnati.com/story/news/politics/2023/12/13/ohio-house-overrides-veto-of-bill-to-prohibit-flavored-tobacco-bans/71912423007/>

418. Cross also commented that “I think government is going to be picking winners and losers on what you can and can’t eat, or drink, or use * * * * We don’t want it to be a backdoor on an infringement of our rights and freedoms.” <https://ohiocapitaljournal.com/2023/12/15/tobacco-veto-override-continues-fight-between-ohio-cities-and-state/>

419. Similarly, House Speaker Jason Stevens tried to justify this unconstitutional infringement upon municipal regulation of tobacco by saying, “Whether it’s small businesses, the continuity across the state — those are kind of more of the important items.” *Id.*

420. On January 24, the Senate followed the House’s lead in voting to override the Governor’s veto of R.C. 9.681.

421. Senate President Matt Huffman attempted to justify this unconstitutional statutory scheme by stating, “People may leave the city of Columbus, even though they live in the city of Columbus, to go buy what they want, and they’re not supporting their local stores.” <https://www.dispatch.com/story/news/politics/2024/01/24/ohio-senate-overrides-dewine-veto-to-block-local-flavored-tobacco-bans/72285578007/>

422. Similarly, Senator Rob McColley claimed this unconstitutional statute is required because “[e]verything regarding building codes and potentially fire codes and different things that they have to comply with, they’ll tell you it adds a significant cost to their business * * * * It adds a complexity to their business. And it makes it more difficult for that business to operate.” <https://news.wosu.org/2024-01-24/ohio-senate-overrides-second-veto-ban-on-local-bans-of-flavored-tobacco-sales-to-become-law>

The Effectiveness of Columbus Public Health's Crackdown on Tobacco Sellers

423. Columbus Public Health has been successful in its regulation of tobacco sellers in the City.

424. In its 2023 Annual Report, the Department noted that in 2023 it conducted 848 educational visits to licensed tobacco sellers to discuss with them the new requirements in the City's code for tobacco sellers, including the end of selling flavored tobacco and tobacco products starting on January 1, 2024.

425. Columbus Public Health also conducted 1,920 buy attempts at licensed tobacco retail facilities in 2023 and found 419 facilities were not in compliance with the City's Code.

426. The lack of compliance were for things like not posting signs, or selling to underage customers, as the City's ban on flavored products had not yet come into force.

427. This means that more than 1 in 5 inspections in the City of Columbus found that the retailer did not comply with the City's code.

428. In 2023, the City collected \$494,000 in civil penalties with an additional \$184,500 outstanding.

429. As of January 8, 2024, out of a total of 800 licensee in the City of Columbus, 402 had one violation and were referred for administrative compliance.

430. As of that same date, 101 licensees had two violations, and six had three violations.

431. Of those six with three violations, two received their third violation in December of 2023.

432. The Department conducted 23 appeal hearings of notices of violation of the City's Tobacco Code, and it held 6 conversations with tobacco retailers to discuss changes to the code requirements and the rationale behind those changes.

433. In comparison to more than 1,900 compliance checks on tobacco retailers performed by the City of Columbus in 2023, the Ohio Investigative Unit (OIU)—which is responsible for enforcing the state’s tobacco laws (among others)—made 2,161 similar checks statewide during the same period. Renee Fox, “*Our hands are tied*”: *State law to curb Ohio cities’ tobacco regulation*, The Ohio Newsroom (Mar. 18, 2024), <https://www.statenews.org/section/the-ohio-newsroom/2024-03-18/our-hands-are-tied-state-law-to-curb-ohio-cities-tobacco-regulation> (accessed Mar. 21, 2024).

434. However, the OIU did not make its statewide compliance checks to impose consequences on violators. *Id.* Rather, it is funded by the federal government to conduct these checks for data collection purposes. *Id.* Thus, the state’s enforcement entity made just a few hundred more checks throughout the state than the City of Columbus alone made within its city limits, and the state imposed ZERO penalties on businesses for non-compliance with the State’s Tobacco 21 law.

First Cause of Action

Violation of Article XVIII of the Ohio Constitution

435. The Plaintiffs restate and reincorporate by reference each and every allegation contained in Paragraphs 1 through 434 of the Complaint as if restated herein.

436. Article XVIII of the Ohio Constitution grants the right to home rule to the state’s municipalities.

437. By prohibiting the ability of a municipality to “enact, adopt, renew, maintain, enforce, or continue in existence any charter provision, ordinance, resolution, rule, or other measure that conflicts with or preempts any policy of the state regarding the regulation of tobacco products or alternative nicotine products,” R.C. 9.681 violates the Plaintiffs’ right to home rule.

438. R.C. 9.681 also provides for the recovery of attorney fees and damages. *See* R.C. 9.681(C).

439. Thus, R.C. 9.681 not only seeks to prohibit Plaintiffs from exercising the authority provided them by the Ohio Constitution it also seeks to penalize them if and when they do.

440. The Plaintiffs seek a temporary restraining order, preliminary injunction, permanent injunction, and declaration that R.C. 9.681 violates the Plaintiffs' constitutional right to home rule.

Second Cause of Action

Violation of Article XVIII of the Ohio Constitution

441. The Plaintiffs restate and reincorporate by reference each and every allegation contained in Paragraphs 1 through 440 of the Complaint as if restated herein.

442. Columbus City Ordinances 3156-2016 and 3253-2022, Columbus City Code Chapter 715 and Columbus Health Code Chapter 248; Bexley City Ordinance 48-22 and Chapter 837 of the Codified Ordinances of the City of Bexley; Cincinnati City Ordinances 192-1994, 193-1994, 287-1995, 16-2012, 363-2018, and 10-2019, Chapters 609 and 850 and Section 895-11 and 895-99 of the Cincinnati Municipal Code, as well as Cincinnati Interim Development Control District No. 66; Cleveland City Ordinances 223-90, 1512-10, 473-11, 695-14, 737-15, 1233-15, 1009-17, Chapter 235, and Sections 203.10, 343.11, 607.15, 629.08 of the Codified Ordinances of the City of Cleveland; Dublin City Ordinances 52-04 and 24-17 and Sections 94.10, 94.11, 94.12, 94.13, 94.14, 94.15, 94.16, 94.17, 94.20, 94.21, 94.22, 94.23, 94.24, 94.99, and 135.17 of the City Code of Dublin; Gahanna City Ordinance ORD-0071-2023 and Chapter 737 of the Codified Ordinances of the City of Gahanna; Grandview Heights City Ordinance 2023-22 and Chapter 523 of the Codified Ordinances of the City of Grandview Heights; Heath City Ordinance 72-2023 and

Sections 521.16, 521.17, 521.18, 521.19, 521.20 and 521.99 of the Codified Ordinances of the City of Heath; Hilliard City Ordinances 17-21, 22-21, and 22-32, as well as Chapters 190, 543, and 757 and Sections 537.16, 537.161, 537.162, and 539.07 of the Codified Ordinances of the City of Hilliard; Oxford City Ordinances 3730 and 3731 and Chapter 744 and Section 537.16 of the Codified Ordinances of the City of Oxford; Reynoldsburg City Ordinance Ordinances 146-17 and 04-2023 as well as Chapter 723 and division (j) of Section 971.15 of the Codified; Upper Arlington City Ordinances 35-2015 and 27-2019, Chapter 1580, and Sections 531.08, 531.09, and 543.02(A)(20) of the Codified Ordinances of the City of Upper Arlington; Whitehall City Ordinance 003-2023 and Chapter 741 of the City of Whitehall Codified Ordinances; Worthington City Ordinances 48-2001, 30-2004, 24-2018, 44-2018, and 25-2023 as well as Chapters 527 and 765 and Sections 531.05 and 537.16 of the Codified Ordinances of the City of Worthington (collectively “Plaintiffs’ Tobacco Regulations”) do not conflict with a general law of the State and are thus constitutional under the Home Rule provisions of Article XVIII of the Ohio Constitution.

443. The Plaintiffs seeks a temporary restraining order, preliminary injunction, permanent injunction, and declaration that R.C. 9.681 violates the Cities’ constitutional right to home rule and that Plaintiffs’ regulations are constitutional under Article XVIII of the Ohio Constitution.

Third Cause of Action

Violation of Article XVIII of the Ohio Constitution

444. The Plaintiffs restate and reincorporate by reference each and every allegation contained in Paragraphs 1 through 443 of the Complaint as if fully restated herein.

445. The State has failed to maintain a comprehensive general regulatory scheme for tobacco products or alternative nicotine products.

446. As a result, the Plaintiffs are free to enter into regulation of tobacco products and alternative nicotine products.

447. The Plaintiffs seek a temporary restraining order, preliminary injunction, permanent injunction, and declaration that R.C. 9.681 violates the Plaintiffs' constitutional right to home rule.

Fourth Cause of Action

Violation of Article XVIII of the Ohio Constitution

448. The Plaintiffs restate and reincorporate by reference each and every allegation contained in Paragraphs 1 through 447 of the Complaint as if restated herein.

449. Article XVIII, Section 3 of the Ohio Constitution grants the state's municipalities the right to adopt and enforce local police, sanitary, and similar regulations as are not in conflict with the state's general laws.

450. "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 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." *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus.

451. R.C. 9.681 is not a general law; rather, it is "an unconstitutional attempt to limit the legislative home-rule powers of" Plaintiffs in violation of Article XVIII, Section 3. *Canton, supra*, at ¶ 10.

452. The Plaintiffs seek a temporary restraining order, preliminary injunction, permanent injunction, and declaration that R.C. 9.681 violates the Plaintiffs' constitutional right to home rule.

Fifth Cause of Action

Violation of Article II, Section 15(D) of the Ohio Constitution

453. The Plaintiffs restate and reincorporate by reference each and every allegation contained in Paragraphs 1 through 452 of the Complaint as if restated herein.

454. Article II, Section 15(D) of the Ohio Constitution 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."

455. R.C. 9.681 has an absence of common purpose or relationship between itself and the rest of HB 33 and there are no discernible practical, rational or legitimate reasons for combining its provisions in the biennial budget.

456. As such, R.C. 9.681 is unconstitutional under Article II, Section 15(D) of the Ohio Constitution.

457. The Plaintiffs seek a temporary restraining order, preliminary injunction, permanent injunction, and declaration that R.C. 9.681 violates Article II, Section 15(D) of the Ohio Constitution.

Sixth Cause of Action

Violation of Article I, Section 2 of the Ohio Constitution

458. The Plaintiffs restate and reincorporate by reference each and every allegation contained in Paragraphs 1 through 457 of the Complaint as if restated herein.

459. For the period of time from 2016 through 2020, Ohio and Franklin County both experienced a 14% decrease in the number of adults who reported being current smokers.

460. While Franklin County saw a 15% decrease in the smoking rate for non-Hispanic White adults, it had an 8% increase in the smoking rate for non-Hispanic African-Americans.

461. The Ohio Department of Health recognizes the importance of health equity.

462. The Ohio Department of Health's website talks about tobacco use prevention and cessation.

463. In that portion of the website, the Ohio Department of Health says that health equity "means that all people have a fair and just opportunity to be as healthy as possible. Understanding health disparities related to commercial tobacco and factors behind these disparities is important for achieving health equity. The Centers for Disease Control and Prevention (CDC) provides more information on the health burdens, practices and conditions impacting several different population groups discussed in this section."

<https://odh.ohio.gov/know-our-programs/tobacco-use-prevention-and-cessation/welcome-to>

464. The Ohio Department of Health provides support for the Tobacco Free Ohio Alliance. <https://odh.ohio.gov/know-our-programs/tobacco-use-prevention-and-cessation/TobaccoFreeAlliance>

465. The Ohio Department of Health, and several of its employees, serve as non-member advisory panel members for the Tobacco Free Ohio Alliance.

466. The Tobacco Free Ohio Alliance has written a report entitled 2020-2025 Strategic Plan For A Tobacco Free Ohio. <https://odh.ohio.gov/know-our-programs/tobacco-use-prevention-and-cessation/tobaccofreealliance/strategic-plan-tobacco-free-ohio-2021-2025>

467. That report noted that “commercial tobacco prevention and control is still a high priority in Ohio as the state ranks as the 9th highest in the nation for adult smoking.” *Id.* at 4.

468. It also stated that the “estimated prevalence of current smokers in Ohio is 20.8%, compared to 16.0% nationwide. Furthermore, the estimated prevalence of current smokeless tobacco use in Ohio is 4.8% compared to 2.4% nationwide. The estimated prevalence of current e-cigarette use in Ohio is 4.6%. And, there are still disparities.” *Id.*

469. The report also noted that “[p]olicy changes such as the decision to exclude menthol from the elimination of sales of flavored cigarettes from the 2009 Tobacco Control Act has resulted in a greater portion of death and disease in the African American population than is estimated would have occurred had this flavor, targeted for use by this population by the tobacco industry, been eliminated as part of the policy.” *Id.* at 8.

470. That report also stated that the “tobacco industry’s documented practice of intentionally targeting people of color and under-resourced communities have created tobacco use inequities in the state of Ohio.” *Id.* at 10.

471. It goes on to say that “[p]ersistent disparities exist among African Americans; American Indians/Alaska Natives; Asian Americans, Pacific Islanders and Native Hawaiians; Hispanic/Latinos; lesbian, gay, bisexual, transgender and queer (LGBTQ) individuals; people with low socioeconomic status; people living with a disability; individuals with behavioral health conditions (including mental health conditions and substance use disorders); and by individuals living in different geographic regions, including Appalachia. Unequal access to tobacco prevention and cessation resources and increased exposure to tobacco advertising perpetuates those inequities, particularly among people of color and populations that are under-resourced.

Unequal access to public health resources and institutional and public policies worsen these disparities.” *Id.*

472. That report noted that the “ongoing youth e-cigarette or vaping epidemic in Ohio threatens to undo decades of progress in reducing youth smoking and tobacco use rates.” *Id.* at 11.

473. The report noted that “youth not only prefer ‘kid-friendly flavors, such as fruit and candy, but also more traditional flavors such as menthol.” *Id.*

474. In recommending local regulation of tobacco retailers and local regulations banning the sale of flavored tobacco and tobacco products, the report said, “[w]ith limited regulation of these products at the federal level, state and local public health agencies must act to supplement existing efforts through local regulation, education, and prevention.” *Id.*

475. The report provided these recommendations: “Measures such as eliminating the sale of flavored products (which include mint and menthol), tobacco retail licensures, and retailer-density regulations have shown to be promising policy tools in the fight to limit youth exposure to both tobacco advertisements and products.” *Id.*

476. The report suggested that “local decision makers” should “consider policies to limit the accessibility and availability of tobacco products to youth. (Model policies are available from ODH upon request).” *Id.* at 16.

477. Finally, the report suggested that “[b]y 2025, [local decision makers should] increase the number of local jurisdictions in Ohio that have laws or regulations limiting the accessibility and availability of tobacco products for youth by 10% (baseline to be established by ODH TUPCP by 2022.)” *Id.* at 18.

478. The report included the following bullet points:

- * Deliver education tools and opportunities for local public health districts related to Tobacco Retail License and other tobacco control regulations;

- * Improve efforts to educate local county and city level officials on the benefits of Tobacco Retail License and other tobacco control measures;

- * Develop model policies and strategy documents for implementing local tobacco control policies; and

- * Strengthen inter-governmental ties at state and local levels to improve policy process and outcomes.

Id.

479. By prohibiting local communities from targeting tobacco and tobacco products, the State has enacted a policy that has a disparate impact on minority communities in violation of the Ohio Constitution.

480. The Plaintiffs seek a temporary restraining order, preliminary injunction, permanent injunction, and declaration that R.C. 9.681 violates Article I, Section 2 of the Ohio Constitution.

Seventh Cause of Action

Violation of Article I, Section 2 of the Ohio Constitution

481. The Plaintiffs restate and reincorporate by reference each and every allegation contained in Paragraphs 1 through 480 of the Complaint as if restated herein.

482. The state has failed to identify any valid state interest in prohibiting local regulation of tobacco and tobacco products.

483. Further, R.C. 9.681 is not a rational way to advance any state interest.

484. Rather, R.C. 9.681 is an arbitrary or unreasonable law.

485. R.C. 9.681 contradicts various recommendations that the Ohio Department of Health has advanced for curtailing the use of tobacco and tobacco related products in both minority as well as youth communities.

486. The Plaintiffs seek a temporary restraining order, preliminary injunction, permanent injunction, and declaration that R.C. 9.681 violates Article I, Section 2 of the Ohio Constitution.

WHEREFORE, the Plaintiffs respectfully request this Court issue the following relief:

- a. A declaration under R.C. Chapter 2721 that R.C. 9.681 violates Article XVIII of the Ohio Constitution;
- b. A declaration under R.C. Chapter 2721 that R.C. 9.681 violates Article I, Section 15(D) of the Ohio Constitution;
- c. A declaration under R.C. Chapter 2721 that R.C. 9.681 violates Article I, Section 2 of the Ohio Constitution;
- d. A declaration under R.C. Chapter 2721 that Plaintiffs' Tobacco Regulations are constitutional and in full force and effect;
- e. A temporary restraining order, preliminary injunction, and permanent injunction against R.C. 9.681;
- f. An order granting the Plaintiffs their costs and fees; and
- g. Any other relief this Court deems just and appropriate.

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