

**IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO**

State of Ohio,	:	
	:	
Plaintiff,	:	Case No. 23CI0287
	:	
v.	:	
	:	
City of Athens	:	Judge George McCarthy
	:	
Defendants.	:	

AMICUS BRIEF OF THE OHIO ENVIRONMENTAL COUNCIL, SURFRIDER FOUNDATION, and SIERRA CLUB IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

/s/Chris Tavenor
Chris Tavenor (0096642)
The Ohio Environmental Council
1145 Chesapeake Ave., Suite I
Columbus, OH 43212
(614) 487-7506 - Telephone
ctavenor@theoec.org

Counsel for Amici
Ohio Environmental Council
Surfrider Foundation
Sierra Club

Submitted May 6, 2024

TABLE OF CONTENTS

INTRODUCTION	1
INTERESTS OF AMICI ENVIRONMENTAL ADVOCATES.....	4
STATEMENT OF FACTS	7
STANDARD OF REVIEW	7
ARGUMENT.....	8
I. The Athens Plastic Bag Regulation is fundamentally an exercise of the City of Athens’s Home Rule authority, protecting human health and the environment.....	10
A. The Athens Plastic Bag Regulation matches other narrowly tailored regulations from the City of Athens designed to limit pollution and reasonably regulate business operations and individual behavior.....	11
B. The Athens Plastic Bag Regulation reflects the most recent science, which shows plastic pollution impacts human health and the environment.....	13
C. The Athens Plastic Bag Regulation reflects the City’s Climate Emergency declaration.....	14
II. The Athens Plastic Bag Regulation is a local ordinance regulating behavior not covered by a general law in Ohio, and it does not conflict with R.C. 3736.021.....	15
A. R.C. 3736.021 is not a general law.	16
1. R.C. 3736.021 is not part of a statewide and comprehensive legislative enactment.....	16
2. R.C. 3706.021 does not set forth police, sanitary, or similar regulations; it merely limits the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations.	20
3. R.C. 3736.021 does not prescribe a rule of conduct upon citizens generally.	22
B. Even <i>if</i> R.C. 3736.021 is a general law (which it is not), it does not conflict with the Athens Plastic Bag Regulation.	24
III. The Athens Plastic Bag Regulation is precisely the type of ordinance that should be affirmed as proper for a local government to implement, as evidenced by similar examples across Ohio and the United States.....	26
CONCLUSION.....	27

INTRODUCTION

The Ohio Environmental Council (OEC), Surfrider Foundation (Surfrider), and Sierra Club (collectively, the Environmental Advocates) submit this amicus curiae brief in support of Defendant City of Athens (“City of Athens” or “Defendant”) Motion for Summary Judgment. The City of Athens defends Ordinance 0-25-23 (the “Athens Plastic Bag Regulation” or the “Ordinance”) against the Plaintiff State of Ohio’s (“Plaintiff” or “State”) meritless legal challenge. As outlined in the City of Athens’s motion and the Environmental Advocates’ amicus brief, and for Ohio’s environment and Ohioans’ health, we urge the Court to grant the Motion.

Plastic pollution is now an omnipresent issue for human health and the environment. Whether it’s as an emerging risk factor for cardiovascular disease¹ due to the appearance of microplastics in the body or as a complex issue in our waste streams, plastic pollution continues to grow as a wicked problem society must solve. It is not going away—if business continues as usual, “roughly 12 billion tons of plastic waste will be in landfills or in the natural environment by 2050.”² As a comparison for the scale of such waste, Ohio’s municipal solid waste landfills received only 10.7 million tons of waste in 2020.³ Communities must reckon with the impacts of plastic pollution, and in the absence of comprehensive state government regulation, local governments must act to protect their residents through the use of their constitutionally-derived Home Rule authority.

The central question presented in this case is whether the R.C. 3736.021 is a “general law” under Article XVIII, Section 3 of the Ohio Constitution that conflicts with the Athens Plastic Bag Regulation. The Environmental Advocates contend that it is not a general law—nor does it conflict

¹ Raffaele Marfella et al, *Microplastics and Nanoplastics in Atheromas and Cardiovascular Events*, The New England Journal of Medicine, (March 6, 2024), available at: <https://www.nejm.org/doi/full/10.1056/NEJMoa2309822>

² Roland Geyer, Jenna R. Jambeck, and Kara Lavender Law, “Production, use, and fate of all plastics ever made,” *Science*, (July 19, 2017), available at: <https://www.science.org/doi/10.1126/sciadv.1700782>

³ Ohio Solid Waste Disposal - 2020, Ohio Environmental Protection Agency, (December 2021), available at: https://dam.assets.ohio.gov/image/upload/epa.ohio.gov/Portals/34/document/guidance/gd_1008.pdf

with the Athens Plastic Bag Regulation. The plain language of both the statute and the local ordinance require an interpretation permitting the City of Athens to appropriately regulate single-use plastic bags in particular circumstances within city limits. Thus, the Court should issue summary judgment in favor of the defendant.

The Athens Plastic Bag Regulation reflects the City of Athens’s understanding of the science of plastic pollution, noting how “numerous studies continue to show the negative environmental and health effects of plastics and chemicals used to produce them” in addition to emphasizing “the prevalence of plastic carry-out bags littering the environment, blocking storm drains, being entangled in trees and vegetation, and fouling beaches.” City of Athens Ordinance 0-25-23. The Ordinance represents an appropriate response to such problems—its active sections are narrowly tailored to regulate the distribution of single-use plastic bags at stores: “no store or vendor shall provide or sell a single-use plastic carryout bag to a customer at the checkout stand, cash register, point of sale or other location for the purposes of transporting food or merchandise from the store after January 1, 2024. Athens City Code 11.13.02(A). At the same time, “nothing in the ordinance prohibits a customer from using bags of any type that they bring to the store or vendor themselves or from carrying away goods that are not placed in a bag.” Athens City Code 11.13.03(A).

Importantly, the Ordinance does not prohibit Athens residents and visitors from using single-use plastic bags in other settings, nor does it prohibit the stores or vendors from using single-use plastic bags for other tasks, such as waste transport. The Ordinance also does not prohibit the use of single-use plastic carryout bags for produce, meat, or other similar product bags. *See* Athens City Code 11.13.01(E). The Athens Plastic Bag Regulation is a plastic pollution reduction measure, a valid use of the municipality’s legislative authority to develop sanitary regulations under Article XVIII, Section 3 of the Ohio Constitution.

The Ohio Attorney General’s complaint against the City of Athens attempts to describe the Athens Plastic Bag Regulation as violating the “right” of Ohioans to use single-use plastic bags. Complaint, Paragraph 18. Leaving aside whether R.C. 3736.021 actually establishes a “right” as the term is commonly used, R.C. 3736.021 states that “[a] person may *use* an auxiliary container for purposes of commerce or otherwise.” *Emphasis added.* R.C. 3767.32 provides the definition of an “auxiliary container” as including “single-use” plastic bags, and thus the State claims the Athens Plastic Bag Regulation violates R.C. 3736.021.

The Environmental Advocates, in support of the City of Athens, argue primarily that the R.C. 3736.021 is not a general law that preempts the Athens Plastic Bag Regulation. However, even if it is a general law (which it is not), the Regulation does not conflict with R.C. 3736.021. The State’s position requires a tortured, rigid reading of the statute if it completely bars all reasonable regulation of “auxiliary containers.” The Athens Plastic Bag Regulation does not prohibit anyone from using single-use plastic bags, nor does it prohibit the use of *all* auxiliary containers; instead, it regulates the instances and moments in which one specific type of auxiliary container (single-use plastic bags) may be distributed or sold in order to accomplish a needed sanitary goal. Importantly, it does not prohibit Athens residents from using a single-use plastic bag if they were to bring their own bag into a store, nor does it prohibit businesses from using single-use plastic bags in other operations of their business outside customer transactions. The State’s reading of R.C. 3736.021 would create a set of unanticipated consequences, implying the unlimited right to use “auxiliary containers” in all moments of commerce, regardless of the consequences.

Thus, for the reasons more fully explored below, the Environmental Advocates urge the Court to issue summary judgment in favor of the City of Athens.

INTERESTS OF AMICI ENVIRONMENTAL ADVOCATES

The Environmental Advocates represent, collectively, the interests of thousands of Ohioans, their communities, and their families who desire a healthy environment. Our legal expertise provides an additional lens through which the Court can understand the regulatory questions it is considering. Fundamentally, we present our arguments to emphasize how this case impacts not just the residents of the City of Athens; it impacts how other communities understand their regulatory responsibilities surrounding plastic pollution, too. Most importantly, the legal questions under the Court's consideration directly impact the Home Rule authority of communities like Athens to reasonably regulate pollution sources and protect the health of their residents and their surrounding environment.

At the OEC, we envision a clean, healthy Ohio where our democracy empowers all communities to thrive in harmony with the environment. The OEC protects the environment and health of all Ohio communities through legal and policy advocacy, decision-maker accountability, and civic engagement. The OEC's interest in this case, and support of the Defendant's position, is fundamental to its mission to protect Ohio's environment and ensure communities thrive in harmony with that environment. Our interest will fundamentally assist the Court in its decision on Defendant's Motion for Summary Judgment.

The OEC is a not-for-profit organization incorporated in Ohio under Section 501(c)(3) of the U.S. Internal Revenue Code, with approximately 3,000 individual members and nearly 100 affiliated member organizations. The home rule powers of local governments to regulate issues that impact human health and the environment are relevant to every Ohioan connected with the OEC and beyond. While state regulation plays a core role in setting the floor for environmental protection, in the absence of explicit statewide regulatory schemes, local governments should be applauded for taking action to pass sensible environmental legislation—not penalized and sued in

state court by the Ohio Attorney General.

The Surfrider Foundation (“Surfrider”) is a 501(c)(3) non-profit environmental organization founded in 1984, and headquartered in California at 942 Calle Negocio, Suite 350, San Clemente, California, 92673. Surfrider’s mission is the protection and enjoyment of the world’s ocean, waves and beaches for all people through a powerful activist network. Surfrider has approximately 350,000 members and supporters. Surfrider has approximately 80 volunteer-driven, grassroots chapters, including the Northern Ohio Chapter, and more than 100 school clubs, located throughout the U.S., carrying out its mission. Surfrider chapters and clubs engage environmental experts to create solutions, unite local and national resources to protect the coast, and leverage their local chapter network’s knowledge with a national perspective.

Surfrider carries out its initiatives through Campaigns and Programs. Surfrider’s five primary initiatives include clean water protection, ocean protection, plastic pollution prevention, beach access, and coastal preservation. Since 2006, Surfrider’s coastal protection work has included a focus on combating plastic pollution. Surfrider’s Plastic Pollution Prevention Initiative focuses on keeping plastic pollution out of our ocean and waterways, including the Great Lakes. Since 2007, Surfrider has achieved over 350 plastic pollution victories, including passing single use plastic bag bans, banning microbeads from consumer products, plastic bottle bills, and other plastics policies. In 2007, Surfrider developed the Rise Above Plastics program to educate the public about the harms of plastic pollution to our ocean and to advocate for a reduction of single-use plastics.

Surfrider’s Plastic Pollution Initiative focuses on hosting over 1,000 beach cleanups per year, supporting over 500 Ocean Friendly Restaurants with reduced plastic usage, and advocating for laws and policies that stop plastic pollution at the source. Surfrider currently has 46 active plastics Campaigns. In addition to the protection of our ocean, waves, and beaches, Surfrider’s

mission prioritizes the enjoyment of these public resources. Surfrider's members recreate at the beach and in the water. Surfrider members are not just surfers, but beachgoers and water recreationalists of all types, spanning from coast to coast – including the rocky ledges of Maine, the warm waters of Florida, the Gulf coast of Texas, the lakeshores of the Great Lakes, the west coast, and Hawai'i.

Surfrider joins this amicus brief on its own institutional behalf and on behalf of all of its members, board, staff, and supporters, some of whom live in and regularly recreate in Ohio. The interests of Surfrider and its members, board, staff, and supporters have been and will continue to be harmed by the prevalence of physical trash, including single-use plastic bags, impacting the health of the waters, wildlife, and members of the public who live in and recreate in Ohio. The Surfrider Foundation Northern Ohio Chapter has nearly 100 active members and over 1,000 supporters. Surfrider members in Ohio have taken action since 2017 to oppose any legislation proposed by the General Assembly that furthers plastic pollution. At the same time, Surfrider members have supported the efforts of local communities to enact legislation to restrict, prohibit, and/or reduce the free distribution of single-use plastic bags.

The Sierra Club (“Sierra Club”) is a nonprofit organization with chapters in each of the 50 states, Puerto Rico, and Washington, D.C. Sierra Club was founded in 1892 and is headquartered at 2101 Webster Street, Suite 1300 in Oakland, California 94612. Sierra Club's mission is: “To explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.” Sierra Club has more than 18,000 members in Ohio, members who recently named “plastic pollution” as one of Sierra Club's top conservation priorities in 2024. Sierra Club has been working since at least 2012 to reduce the impacts of plastic pollution in Ohio, in part by

encouraging personal choices, such as bringing a reusable grocery bag to the store, and by advocating that both local governments and the State of Ohio adopt necessary and appropriate laws and regulations to address the issue. Specifically, Sierra Club members were part of a coalition that advocated for the City of Athens to adopt an ordinance that addressed plastic pollution at a local level.

Last year, the City of Athens passed its Plastic Bag Regulation. Together, the Environmental Advocates present a legal perspective that will assist the Court in its just resolution of the questions before it. The Environmental Advocates maintain that the authority of Ohio municipalities, such as the City of Athens, includes the power to regulate single-use plastic bags and is duly granted by the Ohio Constitution. That authority is not superseded by R.C. 3736.021. The statute is neither a general law, nor does it directly conflict with the Athens Plastic Bag Regulation.

The interests of the Environmental Advocates reflect the interests of Ohioans seeking a cleaner, healthier future for themselves and future generations. If Ohio, and the world, is to grapple with the threat of climate change and associated pollution streams, it must understand the importance of local ordinances like the Athens Plastic Bag Regulation in making progress toward our collectively desired future.

STATEMENT OF FACTS

Amici Curiae accepts, and hereby incorporates Defendants' statement of relevant facts as set forth in Defendant's Motion for Summary Judgment.

STANDARD OF REVIEW

Motions for Summary Judgment occur under Rule 56 of the Ohio Rules of Civil Procedure. For this Court to grant summary judgment for either party in this case, a "movant must show that

(1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion when viewing evidence in favor of the nonmoving party, and that conclusion is adverse to the nonmoving party.” *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241, 245 1996-Ohio-336. In the present case, the question hinges purely on a question of law: is R.C. 3736.021 a general law that conflicts with Athens City Code 11.13.01?⁴

ARGUMENT

The Ohio Constitution provides the foundation for the relationship between state law and local law: “municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Section 3, Article XVIII, Ohio Constitution (hereinafter referred to as “Home Rule” or the “Home Rule Amendment”). Home Rule was included in the Ohio Constitution in 1912, adopted by 58.3% of the vote alongside a variety of other amendments designed to balance the power of the legislature with that of local communities. Importantly, one of the other amendments passed in 1912 created the ballot initiative process Ohioans have come to utilize to pass local and statewide policy at the ballot over the past century, allowing citizens to propose statutes and constitutional amendments in the absence of legislative action. The Ohio General Assembly attempted to curtail the power of ballot initiatives during a special election in August 2023, but Ohio voters resolutely rejected the amendment. *See* Mike Curtin, *From home rule to the initiative itself, Ohio would have never won many reforms under a 60% rule*, Ohio

⁴ The City of Athens also argues that the enactment of R.C. 3736.021 violated the One-Subject Rule of the Ohio Constitution. The Environmental Advocates’ brief does not address this question, but we support the City’s position regarding the additional constitutional violation.

Capital Journal, (July 31, 2023), available at: <https://ohiocapitaljournal.com/2023/07/31/from-home-rule-to-the-initiative-itself-ohio-would-have-never-won-many-reforms-under-a-60-rule/>.

The history of Home Rule is relevant to understand the context at play in this case—the relationship between the Ohio General Assembly and Ohio’s myriad local governments—as well as the Ohio General Assembly’s recent attempts to curtail other forms of collective democratic governance.

Prior to the passage of the Home Rule amendment, “Ohio’s municipalities were mere instruments of the state legislature . . . with only specifically conferred powers, or those by implication, and in the several following years was born the movement for emancipation from legislative bondage.” See *DiBella v. Village of Ontario* (Ohio Com.Pl. 1965) 4 Ohio Misc. 120, 124, 212 N.E.2d 679, 682. According to the legislative history and intent behind its passage, the Home Rule amendment ensured local governments could act independently of the state—and the state should be explicit when it passes general laws overriding Home Rule. For example, in *State ex rel. Morrison*, the state invalidated a local ordinance in part due to the explicit nature of the state statute:

R.C. 1509.02 not only gives ODNR “sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations” within Ohio; it explicitly reserves for the state, to the exclusion of local governments, the right to regulate “all aspects” of the location, drilling, and operation of oil and gas wells, including “permitting relating to those activities.”

State ex rel. Morrison v. Beck Energy Corp., 143 Ohio St.3d 271, 2015-Ohio-485, 37 N.E.3d 128, ¶ 30.

The Environmental Advocates provide this historical background to establish the important balance between state law and local law. Home Rule makes clear that the state can pass general laws overriding local authority, but such power is not unlimited and without safeguards. The Ohio Supreme Court cleanly outlined a three-part test to determine whether a state law and local ordinance conflict: a state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local

self-government, and (3) the statute is a general law. *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 9, holding modified by *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶ 9 (noting that the test “should be reordered to question whether (1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute”).

While the Athens Plastic Bag Regulation may be a local police power, R.C. 3736.021 is not a general law. And even if it is a general law, the Athens Plastic Bag Regulation does not conflict with it. Reading the statute and the Regulation as conflicting with one another requires a tortured reading of the law, one that distorts the relationship between state and municipal power. For these reasons, further explained below, the Court should grant the City of Athens’s Motion for Summary Judgment.

I. The Athens Plastic Bag Regulation is fundamentally an exercise of the City of Athens’s Home Rule authority, protecting human health and the environment.

The City of Athens has a robust history of taking action to address environmental risks facing its community. In 2014, voters passed a local ballot initiative declaring the right to potable water, a healthy environment, a sustainable energy future, and the right to self-government. *See* Athens City Code 97.01.01. City Council Resolution 12-16 (2016) declared single-use carryout bags an environmental concern. Following a series of other environmental ordinances, on May 1, 2023, Athens City Council passed the Athens Plastic Bag Regulation, a narrowly tailored ordinance limiting the provision or sale of “single-use, plastic carryout bags” by stores or vendors while still allowing their use in a variety of other contexts. The Athens Plastic Bag Regulation is exactly the type of regulation we should expect local governments to adopt to address environmental concerns, limiting pollution in their communities and from the operation of businesses. The City of Athens, in response to the science showing plastic pollution impacting human health and

the local environment, took action. And at the same time, their local ordinance will help reduce plastic use, an industry playing a significant role in anthropogenic contributions to climate change.

A. The Athens Plastic Bag Regulation matches other narrowly tailored regulations from the City of Athens designed to limit pollution and reasonably regulate business operations and individual behavior.

The City of Athens has a demonstrable history of passing a variety of ordinances, some more broad than others, designed to protect human health and the environment. The most comprehensive environmental protections in Athens live in the “Athens Community Bill of Rights and Water Supply Protection Ordinance,” found in Chapter 97.01 of the Athens City Code.

Among other goals, it rested on the people of Athens concluding “that the extraction of shale gas and oil, the procurement of fresh water from the watershed for such purposes, and the disposal of associated wastes in Athens City and its jurisdiction, violates the rights of residents and neighborhoods by posing a significant threat to their health, safety, and welfare.” Athens City Code 97.01.02. Passed on the ballot by Athens voters, it made it “unlawful for any corporation to engage in the extraction of shale gas or oil within the City of Athens or its jurisdiction.” Athens City Code 97.01.05.

While Chapter 97.01 broadly attempts to ban an entire industry, the City of Athens also pursues environmental protection through more narrowly tailored regulations, more similar to the Athens Plastic Bag Regulation in question here. The City of Athens has banned businesses from using, for decorative purposes, “any flammable decorative material, including flammable curtains, draperies, [and] streamers.” Athens City Code 9.03.01. In the context of housing, Athens restricts persons from leasing homes unless the structure is “free from unclean and unsanitary conditions.” Athens City Code 9.07.02. Residents and businesses in Athens are also required to

ensure privy vaults, cesspools, and septic tanks do not become “foul, noisome, filthy, or offensive to neighboring property.” Athens City Code 9.08.02. And the City bans the use of tobacco or other tobacco derivatives in any of its outdoor recreational facilities, including parks, restrooms, playgrounds, and beyond. Athens City Code 9.15.03.

Perhaps most directly related to the Athens Plastic Bag Regulation, however, is an Athens ordinance permitting the creation of “glass-free” zones. In part, the City of Athens allows the service-safety director to establish “glass-free” zones, where “no person shall possess any glass container on city-owned property within a glass-free zone duly established by date, time and geographic boundary.” Athens City Code 9.06.04(B). Glass containers fall within the meaning of “auxiliary container” as defined at R.C. 3767.32. Yet like the Athens Plastic Bag Regulation, the “glass-free” regulations are narrowly tailored to a particular purpose: “Glass-free zone” means that portion of the city designated as such by the service-safety director for purposes of maintaining public health and safety during special events.” Athens City Code 9.06.04(B)(3).

The Athens Plastic Bag Regulation is straightforward in its operation and application. It does not ban the use of plastic bags by any business or individual within the City; nor does it outright ban the use of “all” auxiliary containers as used in R.C. 3736.021. Instead, the City created its regulation understanding the context of the Home Rule amendment. *See* Athens Ordinance 0-25-23. The City recognized the science showing “the negative environmental and health effects of plastics and the chemicals used to produce them.” *Id.* It noted “numerous studies have documented the prevalence of plastic carry-out bags littering the environment, blocking storm drains, being entangled in trees and vegetation, and fouling beaches.” *Id.* And the City importantly emphasized “single-use plastic bags cause operation problems at recycling processing facilities, landfills, and transfer stations, and contribute to litter throughout the City of Athens.” *Id.* The

Athens Plastic Bag Regulation thus prohibits a store or vendor from providing or selling “a single-use, plastic carryout bag to a customer at the checkout stand, cash register, point of sale or other location for the purposes of transporting food or merchandise.” *Id* at 11.13.02. It does not ban a person from bringing their own plastic bag for use. It does not ban a business from using plastic bags in other contexts within their store. It does not even ban businesses *from selling plastic bags to customers*, only from providing them for transportation of food or merchandise. The City of Athens created the ordinance to achieve a reduction in single-use plastics into the waste stream of Athens.

B. The Athens Plastic Bag Regulation reflects the most recent science, which shows plastic pollution impacts human health and the environment.

The Athens Plastic Bag Regulation states in its prefatory statements that “studies have shown the presence of micro plastics in terrestrial and marine life systems throughout the planet, resulting in a comprehensive contamination of the food supply due to the proliferation of plastic litter and plastic breakdown products.” *Id*. More succinctly, there is no “away” when it comes to plastics. We cannot recycle our way out of the plastic crisis, and plastic bags are especially problematic. While plastic bags are often labeled “recyclable” with the green chasing arrow symbol, in reality, plastic bags are removed from sorting facilities because they jam up sorting machines, costing recycling centers (and taxpayers) time and money. *See Where Do Your Plastics Go?* AMBR, (June 5, 2022), available at: <https://ambr-recyclers.org/2022/06/where-do-your-recyclables-go/>. China once accepted about 7 million tons a year of plastic waste imports, but stopped accepting those plastic imports in 2018. Christopher Joyce, *Where Will Your Plastic Trash Go Now That China Doesn't Want It?*, NPR, (March 13, 2019), available at: <https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china->

doesnt-want-it. Recycling plastics is just not technically or economically feasible, and over 90% of plastics end up in incinerators or in landfills. *See Supra* FN 2. Trade associations that have promoted plastic recycling (e.g. the American Plastics Council and the Association of Plastic Recyclers) have a membership including oil companies and other industry giants who produce plastic products they want the public to consume. Davis Allen et al, *The Fraud of Plastic Recycling*, Center for Climate Integrity (2024), available at: <https://climateintegrity.org/uploads/media/Fraud-of-Plastic-Recycling-2024.pdf>.

Plastics are not just bad for the environment; they are harmful to wildlife and human health. Plastic is not biodegradable. Instead, plastic breaks down into tiny micro plastic particles that end up in the water we drink and the food we eat. The New England Journal of Medicine recently published that in a study conducted on over 300 people, fifty-eight percent had micro plastics and nano plastics in their carotid artery plaque. *Supra* FN 1. The study also found that “patients with carotid artery plaque in which [micro plastics and nano plastics] were detected had a higher risk of a composite of myocardial infarction, stroke, or death from any cause at 30 months of follow-up than those in whom [plastics] were not detected.” *Id.* When the Athens City Council passed its Plastic Bag Regulation, these or similar scientific findings, and beyond, were likely driving their decision.

C. The Athens Plastic Bag Regulation reflects the City’s Climate Emergency declaration.

In Ordinance 0-25-23, the City of Athens included the following language: “Whereas, City Council resolution 02-20 declared a climate emergency and the need to restore a safe climate through emergency mobilization efforts; and . . . City Council Resolution 15-21 requested the Mayor take all steps necessary to become plastic free by January 2023.” Single-use plastic

comes from fossil fuels, the primary driver of the anthropogenic causes of climate change. See *Frequently Asked Questions about Plastic Recycling and Composting*, United States Environmental Protection Agency, accessed May 5, 2024, available at: <https://www.epa.gov/trash-free-waters/frequently-asked-questions-about-plastic-recycling-and-composting> (“the materials used in the production of plastics are natural products such as cellulose, coal, natural gas, salt and, of course, crude oil”). Harmful greenhouse gases are emitted at every stage of the plastic production process from fossil fuel extraction and transport, through refining and manufacturing, and in the waste management like incineration and landfills, and “it is estimated that just the extraction of [fossil fuels used for plastic production] and their transportation to plastic factories emits 1.5 to 12.5 million metric tons of greenhouse gases.” Kayla Vasarhelyi, *The impact of plastic on climate change*, University of Colorado Boulder Environmental Center, (December 15, 2023), available at: <https://www.colorado.edu/ecenter/2023/12/15/impact-plastic-climate-change>. Thus, the production of plastics is exacerbating the climate crisis and impacting human health. The City of Athens tailored their regulation of the distribution of single-use plastic bags to further their citywide goal to combat climate change.

II. The Athens Plastic Bag Regulation is a local ordinance regulating behavior not covered by a general law in Ohio, and it does not conflict with R.C. 3736.021.

Home Rule jurisprudence is well settled in Ohio and is clearly laid out by the Ohio Supreme Court. A provision of a state statute takes precedence over municipal ordinance when: “(1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute.” *Mendenhall v. Akron* at ¶ 9, citing *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶10. The Environmental Advocates focus our analysis on whether R.C. 3736.021 is (a) a general law and (b) whether, even if it is a general law, it conflicts with the Athens Plastic Bag Regulation.

To determine if a statute is a general law, the Supreme Court of Ohio developed a four prong test. For a statute to be a general law, the statute must:

“(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.”

City of Canton v. State at ¶ 21. For the reasons that follow, R.C. 3736.021 is not a general law. Nor does it conflict with the ordinance promulgated by the City of Athens. Therefore, the state law does not take precedence over the Athens Plastic Bag Regulation.

A. R.C. 3736.021 is not a general law.

R.C. 3736.021 is not a general law because it is not part of a statewide and comprehensive enactment; it does not set forth police, sanitary, or similar regulations; and it does not prescribe a rule of conduct upon citizens generally.

1. R.C. 3736.021 is not part of a statewide and comprehensive legislative enactment.

When determining whether a statute is part of a statewide and comprehensive legislative enactment, courts must “look to the range of activity subject to regulation under the enactment and whether it serves a statewide concern.” *City of Cleveland v. Ohio*, 8th Dis. No 97679, 2012-Ohio-3572, 974 N.E.2d 123, ¶ 23 citing *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48, 2 Ohio B. 587, 442 N.E.2d 1278 (1982); *Ohioans for Concealed Carry, Inc v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967. In *Clyde*, the Ohio Supreme Court considered this issue when analyzing R.C. 9.68, which regulated firearms. *Ohioans for Concealed Carry, Inc v. City of Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶ 40. The Court

held that the General Assembly was clear in its intent for statewide comprehensive handgun possession laws in R.C. 9.68(A), which states that the regulation represents an attempt to nullify all municipal laws impeding uniform application of the state statute. *Id.* at ¶ 40.

Statutes that are not so explicit in their intent can nonetheless still be a part of a statewide and comprehensive legislative enactment. However, when analyzing the statute at issue, it “should not be read and interpreted in isolation from the other sections of the Revised Code dealing with the subject matter.” *Cleveland v. Ohio*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370, ¶ 21. In its Complaint, the State argues that because R.C. 3736.021 is but only one statutory provision contained within Chapter 3736 of the Ohio Revised Code that is concerned with source reduction, recycling market development and litter prevention, that it is a part of a comprehensive legislative scheme relating to recycling market development. The State’s argument contradicts the rationale of the Ohio Supreme Court in *Cleveland v. Ohio*, wherein the court upheld Ohio’s regulations of firearms under R.C. 9.68 as a valid general law that preempted Cleveland ordinances attempting to impose certain stricter firearm regulations. *Cleveland*, at ¶ 21. The firearm regulations were found to be a statewide and comprehensive legislative enactment, in part because the General Assembly explicitly expressed its intent to create such statewide comprehensive handgun laws as discussed above, but also based upon its placement in the context of “a host of state and federal laws regulating firearms.” *Id.* at ¶ 17.

Here, the State argues that R.C. 3736.021 is a part of a comprehensive legislative enactment, but acknowledges it is the only statutory provision concerned with the subject matter. If R.C. 3736.021 is the only provision pertaining to recycling market development it cannot be a part of a statewide and comprehensive legislative enactment. R.C. 3736.021 was enacted as part of the enrollment of House Bill 110, which created appropriations for the years 2022-2023. Am.Sub.H.B. No. 110 As Passed by the House, 134th G.A. (2021). When the bill was initially proposed, it did

not include any amendment to R.C. 3736.021 or mention the use of auxiliary containers. As the appropriations bill shifted as it moved through committee, legislators discussed many different subjects. However, the statute in question here, or even the mere mention of the supposed right to use auxiliary containers that the State claims was part of a comprehensive legislative enactment, was not integrated into the bill until after it was approved by the House Committee and made its way through the Senate and ultimately to conference committee. The version of H.B. 110 passed by the House focuses entirely on budgeting, and the words “plastic” or “auxiliary container” do not appear in the Bill’s 2,759 pages. Not until the legislative service commission published the final analysis of the enacted version of H.B. 110 is the amendment of R.C. 3736 finally mentioned and integrated into the bill. Am.Sub.H.B. No. 110 As Passed by the Senate, 134th G.A. (2021).

The General Assembly discussion surrounding H.B. 110 focused solely on the economic impacts of the proposed Governor’s budget proposal, especially due to the social climate at the time. Much discussion surrounded the economic impacts Ohio had faced due to the COVID-19 pandemic. What is of particular interest is H.B. 110 was passed by the House on April 4, 2021—and there was no mention of R.C. 3736.021. The Ohio House Finance Subcommittee on Agriculture, Development, and Natural Resources took place on March 4, 2021. Testimony from interested parties called the bill one of the most “pro-conservation” budgets seen by environmental advocates in over a decade, claiming it did not just represent the Governor’s interests, but also it symbolized what Ohioans prioritize. H.B. No. 110 Rep. Oelslager Creates FY 2022-2023 Operating Budget, 7th Hearing, Ohio House Subcommittee on Agriculture, Development and Natural Resources, 134th G.A. (2021) (Statement of Trent Dougherty) Among those priorities identified at the meeting were environmental protection and human health. Despite these priorities, the Senate passed a new version of H.B. 110 which enacted new sections to R.C. 3736.021 on June 9, 2021, just a few weeks before the bill took effect on June 30, 2021. Am.Sub.H.B. No. 110, 134th

G.A. (2021). The State’s Complaint puts forth a claim that the comprehensive budget bill provided the “right” for Ohioans to use plastic bags—but the evidence indicates the statute was never contemplated as such a comprehensive scheme. *See* Complaint, Paragraph 18.

R.C. 3736.021 was added late into the legislative process of H.B. 110 and went against the interests of Ohioans. While litter prevention and recycling may be matters of statewide concern, due to a lack of a “statewide and comprehensive framework” of regulations in the Ohio Revised Code for plastic bags, plastic recycling, and auxiliary containers, R.C. 3736.021 fails to meet this prong of the *Canton* test. Compare the statutory scheme here to what was in question in *State ex rel. Morrison v. Beck Energy Corp.*, where the Ohio Department of Natural Resources was given explicit jurisdiction over oil and gas development and specifically named an override of local government authority to regulate oil and gas. *See Morrison v. Beck Energy Corp.*, 2015-Ohio-485 at ¶ 30 (Statute “reserves for the state, to the exclusion of local governments, the right to regulate “all aspects” of the location, drilling, and operation of oil and gas wells, including “permitting relating to those activities.”) Thus, there was no express (or implied) intent by the legislature in enacting the statute to create a statewide uniform set of laws around plastics, single-use plastics in stores, and recycling.

The lack of express intent is further reflected by the language the Ohio General Assembly *could have included* when implementing R.C. 3736.021. Three nearby states—Indiana, Wisconsin, and Michigan—all have similar language regarding the “use” of auxiliary containers. *See* W.S.A. 66.0419; *See also* IC 36-1-3-8.6, M.C.L.A. 445.592. But in those three states, the legislatures included explicit language regarding how local governments may regulate the use of auxiliary containers. In Michigan, Section 445.592 explicitly bans a local unit of government from enforcing an ordinance that “regulates the use, disposition, or sale of auxiliary containers.” M.C.L.A. 445.592(a). Indiana similarly states that a local unit of government “may not regulate, or adopt or

enforce an ordinance or resolution to regulate the manufacture, distribution, sale, provision, use, disposition or disposal of auxiliary containers.” IC 36-1-3-8.6. Wisconsin law also restricts political subdivisions from enacting or enforcing “an ordinance . . . regulating the use, disposition, or sale of auxiliary containers.” W.S.A. 66.0419.

While Home Rule varies state to state as to whether a state legislature can restrict local government without passing a general law, these laws in other states illustrate the limited scope of R.C. 3736.021 in Ohio. The Ohio General Assembly could have created both a comprehensive legislative enactment covering the use of auxiliary containers (plastic, paper, or otherwise), their distribution, their disposal, their recycling, etc. In doing so, it could have made clear it was inhabiting the entire field (as it did in the statutory framework discussed in *State ex rel. Morrison v. Beck Energy Corp.*) and then passed explicit language prohibiting local governments from regulating the sale and distribution—because the state had created its own scheme. And all three states also distinguish the distribution, sale, and provision of auxiliary containers as *separate* from the use. Thus, the sale and provision of auxiliary containers should not be construed as included in the definition of the word “use.” The Ohio General Assembly could have created a comprehensive legislative enactment to cover single-use plastics, other auxiliary containers, and comprehensive recycling and waste management of such single-use materials. It simply did not do so.

2. R.C. 3706.021 does not set forth police, sanitary, or similar regulations; it merely limits the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations.

To satisfy this element of the *Canton* test, the statute must “set forth police, sanitary, or similar regulations, rather than purport[ing] only to grant or limit legislative power of a municipal corporation to set forth police, sanitary or similar regulations.” *City of Canton v. State*, 2002-Ohio-

2005 at ¶ 21. Therefore, a “general law” must affirmatively set forth regulations, not simply prohibit municipalities from asserting their own police powers. This was later clarified in *Clermont*, that “the meaning of this syllabus principle of law is that a statute which prohibits the exercise of its home rule powers without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power.” *Canton* at ¶ 32, citing *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d at 48, 2 OBR 587, 442 N.E.2d 1278.

Ohio courts, for example, have repeatedly declared that statutes regulating traffic and the enforcement of traffic laws set forth police regulations and therefore would fulfill this prong of the *Canton* test. See *City of Dayton v. State*, 151 Ohio St. 168, 2017-Ohio-6909, 87 N.E.3d. 176 (determining R.C. 4511.093(B)(1) limited the legislative power of municipalities by telling cities how to use law-enforcement resources when enforcing traffic laws.) See also *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, 880 N.E.2d. 906 (determining R.C. 5577.05 which purported to let excessively wide trucks on some roads with no permit was an exercise of police power.)

R.C. 3736.021 is in stark contrast to the regulations set forth above that set police regulations. The statute in question here merely allows the use of auxiliary containers and nothing more. Here, the statute prescribes the types of containers that are permissible in Ohio for the purpose of commerce. It does not serve an overriding state interest—the state has not expressed any interest apparent in the legislative history that municipalities *must* mandate or affirmatively permit businesses to utilize plastic bags as single-use “auxiliary containers.” Further, if the State’s overriding interest here was to “reduce sanitation,” “manage recycling, waste, and litter,” or “create a comprehensive program to address plastic pollution,” that interest would demand a reduction of single-use plastic bags. We do not see such an interest outlined here that sets out a police or sanitary regulation. The permissive use of auxiliary containers is not an overriding state interest. Simply

put, R.C. 3736.021 doesn't prescribe any rules at all to pursue a state interest—it simply describes what Ohioans and Ohio businesses “may” do when participating in commerce.

The statute tangentially interacts with the legislative authority of municipalities to pass additional regulations pertaining to auxiliary containers. It includes language clarifying that nothing in the statute “shall be construed to prohibit or limit the authority of any county, municipal corporation, or solid waste management district to implement a voluntary recycling program.” That is, the statute makes clear that local governments may create voluntary recycling programs. However, it does not simultaneously prohibit other regulations pertaining to the use of auxiliary containers. Thus, not only does R.C. 3736.021 fail to set forth police, sanitary, or similar regulations, all it does is state a broad policy that individuals “may use auxiliary containers” while stating that local governments may create voluntary recycling programs. Under a natural reading of the Ohio Constitution and the broad powers awarded to municipalities under the Home Rule provisions, the Athens Plastic Bag Regulation works in harmony with state law. Ohio residents “may use” a certain set of auxiliary containers, and the Court should read the statute to then allow cities to reasonably regulate those auxiliary containers to pursue their own local interests.

3. R.C. 3736.021 does not prescribe a rule of conduct upon citizens generally.

The final element of the *Canton* test requires the statute in question to prescribe a rule of conduct upon citizens generally. “Statutes that go beyond merely limiting municipal authority and establish a rule of conduct for those who are subject to the legislation have satisfied these elements.” *City of Cleveland v. Ohio*, 2012-Ohio-3572 at ¶ 40. Also, a statute in question that “pertains to certain entities only does not prescribe a rule of conduct upon citizens generally, so they do not meet this element.” *Id.*, citing *Village of Linndale v. State*, 85 Ohio St.3d 52, 54 1999-Ohio-434, 706 N.E.2d 1227, 1229.

The Ohio Supreme Court considered an ordinance prohibiting transportation of intoxicating beverages that provided different penalties for violation than a state statute for the same offense. *See Youngstown v. Evans* (1929), 121 Ohio St. 342, 7 Ohio Law Abs. 703, 168 N.E. 844. That statute was found to be not a general law in that it did not prescribe a rule of conduct upon citizens generally. *Id.* at 345. Rather, the statute in *Youngstown* set “a limitation upon law making by municipal legislative bodies.” *Id.* at 345. The Court applied the same rationale in *Village of Linndale v. State*, where a statute that prohibited local law enforcement officers from certain localities from issuing speed and vehicle citations on interstate freeways did not prescribe a rule upon citizens generally. *Canton* at ¶ 19, citing *Linndale* at 54.

The Ohio Supreme Court has decided on separate occasions that regulations that limit the authority of municipal legislative bodies do not apply to citizens generally. R.C. 3736.021 focuses on the use of auxiliary containers for commercial purposes. The statute does not prescribe a rule of conduct upon the citizens of Ohio, requiring the use of auxiliary containers, it merely allows the use of those containers in a commercial setting to those who wish to use them. And if it does prescribe a rule limiting the authority of municipal legislative bodies (which its plain language does not purport to do), then that implied rule would necessarily not apply to Ohioans generally.

The Ohio Attorney General’s reading of R.C. 3736.021 limits Athens’s legislative powers to adopt and enforce specific regulations that are in the best interest of public health and the environment. If the State’s approach is adopted, R.C. 3736.021 becomes the type of statute Ohio courts have repeatedly denounced as a general law, one that fails to prescribe any rule of conduct and “says, in effect, certain cities may not enforce local regulations.” *Linndale* at 55. Because R.C. 3736.021 fails to meet the requisite conditions to be a general law, it must yield to the municipal ordinance.

B. Even if R.C. 3736.021 is a general law (which it is not), it does not conflict with the Athens Plastic Bag Regulation.

A plain language reading of R.C. 3736.021 reveals that it does not conflict with the Athens Plastic Bag Regulation, failing the final element of the *Canton/Mendenhall* test. To evaluate the conflict element, it must be decided whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa. *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, 880 N.E.2d 906, ¶ 17, citing *Struthers v. Sokol*, 108 Ohio St. 263, 1 Ohio Law Abs. 485, 2 Ohio Law Abs. 9, 140 N.E. 519. A controlling consideration of the analysis is that “no real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa.” *Struthers*, at 268. When the statute and the ordinance provide contradictory guidance, then there is direct conflict. *Mendenhall v. Akron* at ¶ 29 (“This test then, which may be labeled ‘contrary directives,’ is met if the ordinance and statute in question provide contradictory guidance”).

R.C. 3736.021 permits a person to use an auxiliary container for purposes of commerce or otherwise, whereas the Athens ordinance prohibits stores and vendors from providing or selling single-use plastic bags to customers. The Athens ordinance prohibits businesses from dispersing more single use plastic out into the Athens community, however it does not ban their use outright. The ordinance is an attempt by Athens to encourage more environmentally friendly business practices, not to simply ban the use of single-use plastic entirely. A customer could still bring their own plastic bag into a store. Other auxiliary containers may also be provided or distributed, such as paper bags, under the State’s definition; R.C. 3736.021 does not require that Ohioans be able to use *all* types of auxiliary containers at *all* moments of commerce. And banning their sale and distribution, does not completely ban their use by businesses; a business could find other uses in commerce for single-use plastics beyond the cash register. Therefore, the statute and ordinance do

not provide “contradictory guidance” or “contrary directives” as envisioned in *Mendenhall*.

Based on the plain language of the ordinance and the statute, the municipal ordinance does not seek to prohibit conduct which the statute allows. Therefore, even if R.C. 3736.021 is deemed to be a general law (which, the Environmental Advocates assert, it is not), the statute and the ordinance are not in direct conflict with each other. Because there is a lack of conflict, R.C. 3736.021 does not take precedence over the municipal ordinance. We remind the court of the other similar statutes in Indiana, Wisconsin, and Michigan, where the word “use” was distinguished from “sale, distribution, provision,” and other similar words. *See* W.S.A. 66.0419; *See also* IC 36-1-3-8.6, M.C.L.A. 445.592. If the Ohio General Assembly had wanted to be explicit regarding sale and distribution, it could have included such words in R.C. 3736.021 while creating a more comprehensive scheme for the regulation of single-use plastics and other auxiliary containers.

Instead, if the Court adopts the State’s reading of R.C. 3736.021 as a blanket ban on local governments developing reasonable regulations pertaining to “auxiliary containers,” the decision could result in a number of potentially contradictory conclusions. First, R.C. 3736.021 is located within a series of statutes purportedly designed to achieve “Litter Prevention and Recycling” (R.C. Chapter 3736). Thus, a local ordinance designed to limit the litter of single-use plastics would be interpreted to conflict with a statute supposedly in pursuit of litter prevention. It remains unclear, regardless, how permissive use of auxiliary containers furthers any sort of comprehensive state legislative scheme regarding litter, recycling, and waste.

Second, the State’s reading would potentially invalidate other reasonable local regulations of “auxiliary containers.” Athens City Code 9.06.04 allows the Service Safety Director to establish “glass-free zones” throughout Athens where “no person shall possess any glass container on city-owned property within a glass-free zone duly established by date, time and geographic boundary.” Glass containers fit within the definition of auxiliary container as provided in R.C. 3767.32. Under

the State’s reading, any city with an ordinance permitting “glass-free zones” has restricted the “right” of Ohioans to use glass auxiliary containers. Yet such a restriction on a specific type of auxiliary container is the precise type of local ordinance we would expect for a city to develop for specific, narrowly tailored purposes.

III. The Athens Plastic Bag Regulation is precisely the type of ordinance that should be affirmed as proper for a local government to implement, as evidenced by similar examples across Ohio and the United States.

Upholding the Athens Plastic Bag Regulation appropriately maintains the balance between the Ohio General Assembly and local governments as envisioned by the Ohio Constitution. The City of Athens is not alone in passing an Ordinance regulating single-use plastic bags—other jurisdictions in Ohio have passed similar ordinances, as have other jurisdictions across the United States.

The City of Athens has company across Ohio in developing regulations designed to reduce the flow of single-use plastic bags into the waste stream. The City of Bexley in Franklin County passed a single-use plastic bag ordinance that went into effect January 1, 2022, a full two years prior to when the Athens Plastic Bag Regulation took effect. *See* Bexley Ordinance 49-20. The Bexley Ordinance, which has not been challenged by the State of Ohio, operates almost identically to Athens’s law: “No Store shall provide a Single-Use, Plastic Carryout Bag to a Customer at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of the Store.” Bexley Codified Ordinance Chapter 888.02(a).

Cincinnati also has a similar law on the books, but the city indicates on its website that “the implementation of the Ordinance has been delayed indefinitely by the City. Until further notice,

the City is not enforcing the Ordinance.”⁵ Cuyahoga County is also not enforcing their ordinance, instead “seeking voluntary compliance from retailers,”⁶ and it is likely both jurisdictions are likely waiting to observe the outcome of this case prior to moving forward with enforcement. Neither Cincinnati nor Cuyahoga County have had their laws challenged by the State.

Other communities across the country have also passed single-use plastic bag regulations, each ordinance tailored to the particular needs and values of that particular community. Some states have even passed statewide laws regulating the use of single-use plastic bags. As of 2024, “twelve states have single-use plastic bag bans: California, Colorado, Connecticut, Delaware, Hawaii, Maine, New Jersey, New York, Oregon, Rhode Island, Vermont and Washington.”⁷ As of 2021, more than 500 municipalities across the United States passed some form of plastic bag regulation; the Athens Plastic Bag Regulation was one amongst many when implemented, a framework now often navigated easily by businesses across the country.⁸ And research suggests that successful plastic bag regulations can eliminate up to 300 plastic bags per person per year.⁹

CONCLUSION

The Court faces a simple question: is R.C. 3736.021 a general law that conflicts with the Athens Plastic Bag Regulation? We urge the Court to hold that the statute is neither a general law

⁵ *Plastic Bag FAQ*, City of Cincinnati, accessed May 4, 2024, available at: <https://www.cincinnati-oh.gov/oes/plastic-bag-faq/>

⁶ *Plastic Bag Ban*, Cuyahoga County Department of Sustainability, accessed May 4, 2024, available at: <https://cuyahogacounty.gov/sustainability/initiatives/byobag/about-the-ban>

⁷ *Plastic bag bans in the US reduced plastic bag use by billions, study finds*, Paige Bennett, World Economic Forum, (January 25, 2024), available at: <https://www.weforum.org/agenda/2024/01/plastic-bag-bans-reduce-waste/>

⁸ *See Plastic Bag Bans Work: Well-designed single-use plastic bag bans reduce waste and litter*, U.S. PIRG Education Fund, (January 2024), available at: <https://publicinterestnetwork.org/wp-content/uploads/2024/01/Plastic-Bag-Bans-Work-January-2024.pdf>

⁹ Joseph Winters, *Plastic bag bans have already prevented billions of bags from being used, report finds*, Grist, (January 23, 2024), available at: <https://grist.org/solutions/plastic-bag-bans-have-already-prevented-billions-of-bags-from-being-used-report-finds/>

regulating the conduct of Ohioans—nor does it conflict with the Ordinance. The plain language of the statute, when read alongside the Athens Plastic Bag Regulation, allows for both statute and local rule to exist simultaneously. Ohioans may use a variety of auxiliary containers; Athens regulates specific moments where a specific auxiliary container (single-use plastic bags) may enter the commercial stream. Single-use plastic bags may still be used; they simply may not be distributed or sold at the cash register in Athens. Athens developed a narrowly tailored rule to reduce its contribution to plastic pollution and climate change. It also endeavors to improve the health of its community and environment. The State should be applauding the City’s efforts, rather than litigating them.

The City of Athens’s Motion for Summary Judgment should be granted.

Respectfully submitted,

/s/Chris Tavenor

Chris Tavenor (0096642)
The Ohio Environmental Council
1145 Chesapeake Ave., Suite I
Columbus, OH 43212
(614) 487-7506 - Telephone
ctavenor@theoec.org

Counsel for Amici
Ohio Environmental Council
Surfrider Foundation
Sierra Club

CERTIFICATE OF SERVICE

I certify that on May 6, 2024, the foregoing was electronically filed via the Court's e-Filing System, which will send notice to counsel of record. Courtesy copies were sent to counsel via electronic mail as well. Thus, under Ohio Civil Rules of Procedure, Rule 5, a true and accurate copy of the foregoing Motion has been delivered to:

Dave Yost
Ohio Attorney General
Julie Pfeiffer
Counsel of Record
Michael A. Walton
Stephen P. Tabatowski
julie.pfeiffer@ohioago.gov
michael.walton@ohioago.gov
stephentabatowski@ohioago.gov
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

Counsel for State of Ohio

Lisa Eliason
Law Director, City of Athens
Jesse Branner-Hittle
Assistant Law Director, City of Athens
leliason@ci.athens.oh.us
jbranner-hittle@ci.athens.oh.us
8 E. Washington Street, Suite 301
Athens, OH 45701

Counsel for Defendant City of Athens

/s/Chris Tavenor
Chris Tavenor (0096642)
Counsel for Amici Environmental Advocates
Ohio Environmental Council
Surfrider Foundation
Sierra Club