IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

CITY OF COLUMBUS, OHIO, et al.,	:	
Plaintiffs	:	Case No. 15CVH-09-7915
vs.	:	
STATE OF OHIO,	:	JUDGE HOLBROOK
Defendant	:	

DECISION AND ENTRY GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court upon the cross-motions for summary judgment filed by Plaintiffs City of Columbus, Ohio; City of Akron, Ohio; and City of Barberton, Ohio[1] (collectively, the "Cities") and Defendant State of Ohio's (the "State"). Oral arguments on the motions were held September 14, 2018. Having reviewed the briefs, the evidence in the record, arguments of counsel, and salient law, the Court issues the following decision.

Background

R.C. 743.50 was enacted within H.B. 64, a biennial appropriations bill, and provides:

> (A) A municipal corporation that has established and implemented a watershed management program with regard to a reservoir for drinking water shall allow an owner of property that is contiguous to property that constitutes a buffer around a body of water that is part of such a reservoir to maintain property that constitutes a buffer if the maintenance is for any of the following:
>
> (1) Creation of an access path that is not wider than five feet to the body of water;
>
> (2) Creation of a view corridor along adjacent property boundaries;

[1] Plaintiffs City of Westerville, Ohio and City of Lima, Ohio's claims were previously dismissed on summary judgment as neither party had established and implemented a watershed management program rendering them without standing to challenge the constitutionality of R.C. 743.50.

(3) Removal of invasive plant species as defined in section 901.50 of the Revised Code;

(4) Creation and maintenance of a filter strip of plants and grass that are native to the area surrounding the reservoir in order to provide adequate filtering of wastewater and polluted runoff from the owner's property to the body of water;

(5) Beautification of the property.

(B) A peace officer or other official with authority to cite trespassers on property that is owned by a municipal corporation and that constitutes a buffer as described in division (A) of this section shall not issue a civil or criminal citation to an individual who enters the property for the sole purpose of mowing grass, weeds, or other vegetation or for any of the purposes specified in that division.

The Cities bring their complaint and associated motion for summary judgment seeking a declaration that R.C. 743.50 is unconstitutional under various constitutional amendments and doctrines of law. Conversely, the State's motion for summary judgment contends that the constitutional provisions cited in the complaint and motion are inapplicable to R.C. 743.50 as a matter of law.

Standard of Review

Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to

but one conclusion, that conclusion being adverse to the nonmoving party. *Phillips v. Wilkinson*, 10th Dist. No. 17AP-231, 2017-Ohio-8505, ¶ 11, citing *Byrd v. Arbors E. Subacute & Rehab. Ctr.*, 10th Dist. No. 14AP-232, 2014-Ohio-3935 at ¶ 6, citing *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978).

"'[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim.'" *Byrd* at ¶ 7, quoting *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). "Once the moving party meets its initial burden, the nonmovant must set forth specific facts demonstrating a genuine issue for trial." *Phillips* at ¶ 12, citing *Byrd* at ¶ 7, citing *Dresher* at 293.

It is well settled that legislative enactments enjoy a presumption of constitutionality. *Beatty v. Akron City Hosp.*, 67 Ohio St. 2d 483, 493 (1981). When a statute is challenged as unconstitutional, a court must apply all presumptions and rules of construction so as to uphold the statute if at all possible. *State v. Dorso*, 4 Ohio St. 3d 60, 61 (1983). A statute will be declared unconstitutional only if it "appears beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible." *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142 (1955). With these standards in mind, the motions for summary judgment will be considered.

Discussion

Generally, the parties agree that there is no genuine issue of material fact. Instead, all that is before are legal issues. Specifically, where their positions differ is on the applicability

of (i) the single-subject rule set forth in Article II, Section 15(D) of the Ohio Constitution; (ii) the utility clause set forth in Article XVIII, Section 4 of the Ohio Constitution; and (iii) the home rule powers set forth in Article XVIII, Section 3 of the Ohio Constitution. According to the Cities, the statute violates each of these provisions, and is, therefore unconstitutional. In opposition, the State takes the position that these constitutional provisions are inapplicable to R.C.743.50. The Court addresses each contention in turn, beginning with the single-subject rule.

Single-Subject Rule

Article II, Section 15(D) of the Ohio Constitution provides that no bill of the General Assembly "shall contain more than one subject, which shall be clearly expressed in its title." This is commonly known as the "one-subject rule" or "single-subject rule."

In its consideration of the one-subject rule, the Supreme Court of Ohio in *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 145 (1984), described the purpose of this provision:

> . . . When there is an absence of common purpose or relationship between specific topics in an act and when there are no discernible practical, rational or legitimate reasons for combining the provisions in one act, there is a strong suggestion that the provisions were combined for tactical reasons, i.e., logrolling. Inasmuch as this was the very evil the one-subject rule was designed to prevent, an act which contains such unrelated provisions must necessarily be held to be invalid in order to effectuate the purposes of the rule.

The single-subject rule is mandatory. *In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, P54. That said, the judiciary's role in the enforcement of the single-subject rule must be limited. *State ex rel. Ohio Civil Serv. Employees Assn, Local 11 v. State Empl. Rels. Bd.*, 104 Ohio St. 3d 122, 2004-Ohio-6363, P27 ("SERB"). In order to avoid interference with the legislative process, courts are to afford the General Assembly great latitude in enacting

comprehensive legislation and are to proceed with a presumption in favor of constitutionality. Id.

To that end, the Supreme Court of Ohio has recognized that "[t]he mere fact that a bill embraces more than one topic is not fatal, as long as a common purpose or relationship exists between the topics." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St. 3d 451, 496, 1999-Ohio-123. The question then becomes whether the various topics unite to form a single subject for purposes of Section 15(D), Article II, of the Ohio Constitution. Id. at 497. A Court's decision that they are not so united is to conclude that there is "no discernable practical, rational or legitimate reason for combining the provisions in one Act." SERB at P28, quoting *Beagle v. Walden*, 78 Ohio St.3d 59, 62, 1997-Ohio-234.

Amended Substitute H.B. 64 ("H.B. 64") containing R.C. 743.50 was a biennial appropriations bill. Evaluation of appropriations bills under the single-subject rule is more complex because they necessarily include numerous pieces bound by the thread of appropriations. *Simmons-Harris v. Goff*, 86 Ohio St.3d 1 (1999). This complexity is heightened by the fact that appropriations bills, due to their importance and likelihood of passage, are especially susceptive to the danger of riders. Id. (citations omitted).

As is the case here, the Court in SERB, was also tasked with the review of an amendment included in an appropriations bill. 104 Ohio St. 3d 122, 2004-Ohio-6363. The Court ultimately held the amendment, which resulted in the exclusion of OSFC employees from the collective-bargaining process, violated the single-subject rule. Id. In so holding, the Court found the common connection between the challenged provision and

appropriations was too tenuous to pass constitutional muster. Id. Specifically, the Court opined:

> . . . This argument . . . stretches the one-subject concept to the point of breaking. Indeed, SERB's position is based on the notion that a provision that impacts the state budget, even if only slightly, may be lawfully included in an appropriations bill merely because other provisions in the bill also impact the budget. Such a notion, however, renders the one-subject rule meaningless in the context of appropriations bills because virtually any statute arguably impacts the state budget, even if only tenuously. . . .

Id. at P33. The Court also noted that SERB offered little guidance as to how the exclusion of OSFC employees from the collective-bargaining process would affect the state budget. Id. at P34. In fact, in SERB, the record was devoid of any explanation of how excluding OSFC employees from the collective-bargaining process would clarify, alter or impact the appropriation of state funds. Id.

Like the statute in SERB, R.C. 743.50 was an extremely small portion of H.B.64. The bill consists of 2,874 pages, of which R.C. 743.50 takes up less than one page. Surrounding that page are hundreds of different provisions of law, including provisions addressing funding for Department of Education programs, distributions of money from the "Choose Life" fund, caps on Higher Education tuition increases, as well as establishing free public transportation for certain veterans, and hourly rates for indigent defense.

Despite the apparent disunity between the foregoing budget-related items and the regulation of the buffers surrounding municipal drinking water reservoirs, the State claims that the provisions of H.B. 64 are all bound by appropriations. Thus, according to the State they are united to form a single subject for purposes of the single-subject rule. As the Supreme Court of Ohio did in SERB, this Court finds that such argument stretches the one-

subject concept to the point of breaking. SERB at P33. Allowing property owners adjacent to city-owned land the ability to maintain such land by the creation of an access path or view corridor which serves to benefit only the adjacent property owner is not even slightly related to the balancing of state expenditures against the revenues. Further, the State has offered little guidance regarding the manner in which R.C. 743.50 affects the state budget aside from the general argument that the statute "ensures efficient government operations and cost savings in watershed and drinking water management." State's Mot. at p. 14. There is no evidence in the record to explain or clarify how R.C. 743.50 will do so. Accordingly, this Court can discern no purpose or relationship between the budget-related items in H.B. 64 and a private property's owner's authority to alter the city-owned drinking water buffer area.

The State's citations to *State ex. rel. Civ. Serv. Emp. Ass'n v. State*, 146 Ohio St.3d 315, 2016-Ohio-478 ("OSCEA") and *City of Riverside v. State, 190 Ohio App.3d 765, 2010-Ohio-5868* do not alter this conclusion. As pointed out in the State's motion, the statute at issue in OSCEA required that a private entity wishing to operate a state correctional facility demonstrate that it will save the public agency five percent of its projected costs in providing the same services. Id. at ¶29. Saving a state agency five percent of its projected costs directly relates to the state budget bringing it precisely within the purview of appropriations. Similarly, in *Riverside*, the tax exemption at issue represented a direct limitation on the city's authority to generate revenue which also necessarily impacts the budget. *City of Riverside*, 2010-Ohio-5868 at P48. Whereas here, R.C. 743.50 contains no mandate like in OSCEA. Nor is there any reference to any form of money, income, expense, debt, or cash flow as was the case in *Riverside*. Finally, R.C. 743.50 does not include provisions related

to a regulatory program funded by the appropriations bill like that in *Rivers Unlimited, Inc. v. Schregardus*, 86 Ohio Misc.2d 78, 82-83. As a result, this Court again, can find no rational reason, other than the logrolling the single-subject rule seeks to prevent, for including R.C. 743.50 in the appropriations bill.

Based on the forgoing, and applying all presumptions in favor of the constitutionality of R.C. 743.50, the Court concludes that is beyond reasonable doubt that R.C.743.50 violates the single-subject rule set forth in Article II, Section 15(D) of the Ohio Constitution, and is therefore, void.

Utility Clause

Though the Court's inquiry could end here, the Court is of the opinion that consideration of the remainder of the parties' arguments in the motions for summary judgment is prudent. Section 4 of Article XVIII of Ohio's Constitution, known as the Utility Clause, provides: "Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. . . ."

Thus, the forgoing rights are derived directly from the people through the Ohio Constitution. Accordingly, it is well-settled law in Ohio that the legislature may not impose restrictions upon a municipality's power to operate a public utility under Article XVIII of the Ohio Constitution. *State, ex rel. McCann, v. Defiance*, 167 Ohio St. 313 (1958); *Swank v. Shiloh*, 166 Ohio St. 415 (1957); *Euclid v. Camp Wise Assn.*, 102 Ohio St. 207 (1921). The General Assembly may, however, enact restricting legislation under its general police power

if it bears a real and substantial relationship to the public health, safety, morals or general welfare, and if it is not unreasonable or arbitrary. *Columbus v. Teater*, 53 Ohio St. 2d 253, 260-261 (1978); *Canton v. Whitman*, 44 Ohio St. 2d 62, 68(1975). The Supreme Court of Ohio further explained the rule as follows:

> Where the state enacts a statute promoting a valid and substantial interest in the public health, safety, morals or welfare; where the statute's impact upon the municipal utilities is incidental and limited; and where the statute is not an attempt to restrict municipal power to operate utilities, the statute will be upheld. Conversely, . . . where the purpose of a statute is to control or restrict municipal utilities, the statute must yield. The majority of cases, however, . . . fall between these extremes. *Columbus v. Pub. Util. Comm.* (1979), 58 Ohio St. 2d 427, 433, 12 Ohio Op. 3d 361, 390 N.E.2d 1201

In those cases, the court must "'balance the rights of the state against those of the municipality and endeavor to protect the respective interests of each.'" Id. at 433, quoting *Teater*, 53 Ohio St. 2d at 261. Ultimately, the "outcome of the constitutional argument involved will depend on the facts and circumstances of the case." Id.

Before delving into the balancing of the rights, the parties' arguments in the motions for summary judgment compel the Court to first consider whether R.C. 743.50 even implicates the Utility Clause. According to the State, the Cities' maintenance of buffer lands does not equate to the operation of a utility. Thus, any restriction R.C. 743.50 places on such use and maintenance is unrelated to the Cities' drinking water utilities. The Court, however, disagrees with this position.

First, the most blatant indicator of R.C. 743.50's relationship to the Cities' authority to operate their drinking water utilities is its location in the Revised Code; namely, Title 7 Municipal Corporations, Chapter 743 Utilities – Electric; Gas; Water. Furthermore, the State's position overlooks the substance of the statute. R.C. 743.50 only applies to municipal

corporations that have "established and implemented a watershed management program with regard to a reservoir for drinking water." R.C. 743.50(A). Had the General Assembly not intended to restrict the operation of the Cities' drinking water reservoirs, it would not have so limited the statute. Along the same lines, the language of R.C. 743.50 both requires the Cities to allow access to city-owned property, and prevents the Cities from issuing civil or criminal citations. In doing so, the statute necessarily restricts or interferes with the Cities' ownership of the buffer land that plays a role in the delivery of clean drinking water to the public. See *McCann*, 167 Ohio St. at 318 (Utility Clause is implicated when legislation restricts, interferes with or even regulates the acquisition, construction, ownership, lease or operation of a municipal public utility or the sale or delivery of its product). Finally, as eluded to in the forgoing sentence, the buffer performs an integral step in the operation of the Cities' of their drinking water utilities. Specifically, the vegetative buffer acts as both a barrier and filter reducing the contaminants entering the raw drinking water stored in the adjacent reservoirs.

In light of the forgoing, the Court concludes that R.C. 743.50 implicates the Utility Clause by restricting and interfering with the Cities' ability to operate the drinking water utilities.

Having so determined, the Court now turns its attention to the balancing of the parties' respective interests. To do so, the Court must evaluate whether: (1) R.C. 743.50 promotes a valid and substantial interest in the public health, safety, morals or welfare; and (2) R.C. 743.50's impact upon the Cities is incidental and limited.

Upon review of the record, the Court finds the Cities' interests outweigh those of the State for each of the forgoing considerations. As to whether R.C. 743.50 promotes a valid and substantial interest in the public health safety, morals, or welfare, the Court need look no further than the express language of the statute to see that the only interests being promoted are those of the relatively few individuals owning land adjacent to the buffer area of the Cities' drinking water reservoirs. Neither the public health, safety, morals, nor welfare are advanced by these individuals' ability to create access paths or view corridors, or to otherwise beautify the buffers.

To the contrary, the evidence before the Court tends to show that certain provisions of R.C. 743.50 actually place the public health and welfare at risk. This is perhaps most aptly recognized in the Governor's veto of the prior proposed legislation on the topic, R.C. 743.50:

> restrict[s] municipalities' ability to use buffer zones of grass, trees or other vegetation to protect waterways, reservoirs and sources of public drinking water from contamination from the runoff of fertilizers, pesticides, pet and livestock feces, sediments and other contaminants. Such contaminants pose threats to the quality and safety of public water supplies and, in some cases, are the root cause of algal and cyanobacteria blooms responsible for severe oxygen-depletion zones that can kill aquatic life. Furthermore, pesticides can be difficult and costly to remove from public drinking water supplies, and high levels of bacteria can be an acute health risk.

See Columbus Ex. 18 at p.3. Given the recognized detriment that the activities permitted in R.C. 743.50 can impose on the public health, the Court finds the Cities' interest in the exclusive maintenance of the buffers is paramount.

The Court recognizes that the R.C. 743.50 also allows for the landowners to remove invasive plant species and to create and maintain a filter strip of native plants and grasses to provide adequate filtering. Arguably, these activities do operate to promote the public health

and welfare; however, such activities are precisely what the Cities' are accomplishing through their watershed management and stewardship programs. The Court sees no valid interest in the creation of new legislation to achieve what is already in place.

Turning next to R.C. 743.50's impact on the Cities' operation of their drinking water reservoirs, the Court finds the same to be more than incidental or limited. As set forth above, the operation of the reservoirs includes the Cities' ownership and maintenance of the buffer land which plays a role in the delivery of clean drinking water to the public. R.C. 743.50 significantly impacts the Cities' ownership rights, including the right to use and exclude, by mandating that the Cities' provide access to contiguous landowners for the identified activities.

Furthermore, the Cities have provided the Court with detailed watershed management plans aimed at "grow[ing], install[ing], establish[ing], manag[ing], protect[ing], and repair[ing] natural vegetative buffers on [their] riparian property." Westerfield Aff. at ¶30. Other than protecting and enhancing the water quality, there would be no need for these watershed management plans. More specifically, as the creation of these buffers relate to the supply of drinking water, they operate filter runoff and contaminants from entering the reservoirs. The benefits are reflected in the two primary outcomes. First, and most obvious, is the reduction of harmful contaminants in the raw drinking water. Second, when the source water starts out cleaner, it necessarily requires less resources to treat that water for drinking water distribution and consumption. Those savings can then be passed along to the end user.

When these buffer areas are not properly managed, and view corridors and access paths are created, the effectiveness of the vegetative buffer is diminished. In other words, more contaminants may enter the raw drinking water stored in the reservoirs, ultimately impacting the water supply not just tangentially, but significantly. The same is true where neighboring owners are permitted to mow grass, weeds, or other vegetation in the name of beautification.[2] The significance of the impact of R.C.743.50 on the Cities' drinking water reservoirs is further amplified by the statute's deprivation of the Cities of any means to prevent such destruction.

Based on the above, and applying all presumptions in favor of its constitutionality, the Court finds that R.C. 743.50's restrictions on the Cities' operation of their drinking water utilities operates as an unlawful violation of the Utility Clause, and is therefore, unconstitutional. Notwithstanding the forgoing, the Court further finds that R.C. 743.50 does not advance a valid or substantial state interest in the public health safety, morals or welfare, and that its impact on the Cities' ability to operate their drinking water utilities is substantial. For these additional reasons, the Court concludes beyond a reasonable doubt that R.C. 743.500 and the Utility Clause are incompatible.

Home-Rule Amendment

Finally, the Court considers the parties' arguments concerning the Cities' remaining claim for a declaration from this Court that R.C. 743.50 is unconstitutional under the

[2] Though the Court has previously held that the "beautification "provision R.C. 743.50 was not void for vagueness, the Court still struggles with how it is measured. Is beautification determined by the landowner, the Cities, the peace officer or official with authority to cite trespass? Given the anticipated litigation that could spawn from R.C. 743.50, the Court suspects that it will ultimately be the trier of fact.

"Home-Rule Amendment." Article XVIII, Section 3 of the Ohio Constitution, commonly known as the Home Rule Amendment, authorizes municipalities "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."

The State advances two arguments in support of its position that the Cities cannot maintain their Home Rule Amendment claim as a matter of law. First, the State claims the Cities' maintenance of the buffer property is not a matter of local self-government, but is instead the exercise of the Cities' police power. Further, the State argues such police powers must be overridden by R.C. 743.50, as a conflicting general law.

Naturally, the Cities take the complete opposition position. Specifically, the Cities contend their ownership and management of the buffer land is strictly within their powers of local self-governance. The Cities also contend that even if this Court were to construe their policies and practices concerning the use and maintenance of their property to be the exercise of their police power, R.C. 743.50 still violates the Home Rule Amendment as it is not a "general law."

According to these arguments, there are two basic questions before the Court on the issue of whether R.C. 743.50 violates the Home Rule Amendment. First, is whether the Cities' use and maintenance of their property constitutes local self-government or the exercise of their police power. If it is the latter, then the question becomes whether R.C. 743.50 is a general law. See *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*,65 Ohio St. 3d 242, 244, 1992-Ohio-65; *Complaint of City of Reynoldsburg v. Columbus Southern Power Co.*, 134 Ohio St. 3d 29, 33, 2012-Ohio-5270 ("[T]he first step is to

determine whether the ordinance involves an exercise of local self-government or an exercise of local police power. If the ordinance relates solely to self-government, the analysis ends because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.").

Thus, the Court turns its attention to police powers and powers of local self-government. Generally, "[a]n ordinance created under the power of local self-government must relate 'solely to the government and administration of the internal affairs of the municipality.'" *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92, ¶ 11, quoting *Beachwood v. Cuyahoga Cty. Bd. of Elections*, 167 Ohio St. 369 (1958), paragraph one of the syllabus. Conversely, "the police power allows municipalities to enact regulations only to protect the public health, safety, or morals, or general welfare of the public." Id., citing *Downing v. Cook*, 69 Ohio St.2d 149, 150 (1982).

Upon the forgoing legal framework, and for the reasons that follow, this Court finds that the Cities' use and maintenance of their buffer property surrounding their drinking water reservoirs is authorized by the Ohio Constitution's grant of "all powers of local self-government" *and* by the grant of the police power to adopt and enforce regulations protecting the public health, safety, or morals, or the general welfare of the public.

This Court has held the phrase "powers of local self-government" has two different meanings: a broader meaning that would include all powers that a municipality typically exercises in governing itself, and a narrower meaning which would include all such powers except the power to enact police, sanitary, and other similar regulations. *City of Dublin v. State*, 118 Ohio Misc.2d 18, 56 (Fr. Co. C.P. 2002). In evaluating under what circumstances

the two meanings apply, the Court went into an extensive analysis of Ohio Supreme Court and appellate cases addressing the same, which this Court will not repeat here. As relevant to this case, the Court in *Dublin* recognized "[s]ince the municipal power to convey municipal property, and, specifically, municipally owned public ways, is included in the 'powers of local self-government' (narrowly construed), so is the power to convey limited interests in that property" including the right to use or occupy the property. Id. at 74-75. The Court further noted:

> the power to control one's conveyance of property provides a method of regulation that is different from police, sanitary, and other similar regulation. A property owner can regulate the use of his/her/its property by controlling what limited rights to use that property will be transferred to others. Such a power to regulate the conduct of others is different from the power to enact police, sanitary, and similar regulations because the power of control over one's own property is dependent upon having the status of being the property owner and does not include any right of control over the conduct of others when that conduct has nothing to do with the use or abuse of one's own property. By contrast, the power to enact police, sanitary, and similar regulations does not depend upon the status of property ownership and is not limited to control over other's use or abuse of one's own property.

Id. at. 59. As to police, sanitary and other similar regulations, the *Dublin* Court observed, municipalities' attempts to regulate the public's use of their streets for ordinary transportation purposes is uniformly recognized as the exercise of their police powers. Id. at 61.

Here, R.C. 743.50 restricts the Cities' ability to regulate the use of the buffer property it owns by controlling how neighboring property owners can use the same. There can be no doubt that the statute allows neighboring property owners to enter onto city-owned land and remove vegetation therefrom. According to *Dublin* and the cases analyzed therein, such

restriction infringes upon the Cities' power to locally self-govern as the phrase is narrowly construed. In doing so, the statute conflicts with the Home Rule Amendment.

Notwithstanding the forgoing, this Court is cognizant that the Cities' watershed management plans are designed to promote the health, safety, and welfare of the public receiving drinking water from their reservoirs. In that regard, the watershed management plans operate as the exercise of the Cities' police power.

This hybrid exercise of power compels the Court's consideration of whether R.C. 743.50 is a "general law." As such, the Court consults the four-part test announced in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, syllabus.

> 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 95 Ohio St.3d at syllabus.

The Court analyzes the four parts out of order beginning first with whether R.C. 743.50 prescribes a rule of conduct upon citizens generally. The Court finds that it does not. By its express language, R.C. 743.50 only applies to municipal corporations that have established and implemented watershed management programs for their drinking water reservoirs. Moreover, the statute limits the ability to enter onto the Cities' buffer property to only those individuals owning property that is contiguous to the buffer. With these limitations, there is simply no way to conclude that R.C. 743.50 regulates the conduct of all citizens.

Turning to whether the R.C. 743.50 applies uniformly throughout the state. The Court finds that it does not. In *Schneiderman*, the Supreme Court of Ohio held that general laws must "apply to all parts of the state alike." *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 83(1929). The *Garcia* Court set forth a similar requirement that general laws are "laws operating uniformly throughout the state." *Garcia v. Siffrin Residential Assn.*, 63 Ohio St.2d 259, 271 (1980). "The requirement of uniform operation throughout the state of laws of a general nature does not forbid different treatment of various classes or types of citizens, but does prohibit nonuniform classification if such be arbitrary, unreasonable or capricious." *Garcia*, 63 Ohio St.2d at 272, citing *Miller v. Korns*, 107 Ohio St. 287 (1923).

As in *Garcia*, R.C. 743.50 creates two distinct classes of municipalities owning drinking water reservoirs – those who have developed and implemented watershed management plans and those who have not. The Court is acutely aware of the non-uniformity of this classification as a result of the dismissal of two plaintiffs from this case because, although they owned and operated drinking water reservoirs, they had not adopted or implemented watershed management programs. The Court finds that singling out those municipalities who have taken the time and resources to development programs aimed at improving water quality is both arbitrary and unreasonable. If the General Assembly was truly interested in the uniform application of R.C. 743.50 throughout this state it would have drafted the legislation in such a matter as to subject all municipalities owning buffer lands around its drinking water reservoirs to its provisions.

As to the first prong of the *Canton* test, the Court finds that R.C. 743.50 is part of a statewide and comprehensive legislative enactment; namely, the General Assembly's

regulation of municipal water utilities. See *City of Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, ¶21 ("A comprehensive enactment need not regulate every aspect of disputed conduct, nor must it regulate that conduct in a particularly invasive fashion.").

Finally, the Court finds that although R.C. 743.50 operates to restrict the Cities' ability to operate their water utilities, it also constitutes the State's exercise of its police power thereby satisfying the third prong of *Canton's* general law test.

Having found that R.C. 743.50 fails to satisfy two of the four parts of the *Canton* test, the Court concludes beyond a reasonable doubt that R.C. 743.50 is not a general law. Accordingly, its conflict with the Cities' watershed management programs and ownership rights is an unconstitutional violation of the Home Rule Amendment.

Conclusion

Applying all presumptions and rules of construction so as to uphold the constitutionality of R.C. 743.50, the Court concludes beyond a reasonable doubt that the same is in conflict with the single-subject rule, the utility clause, and the home rule amendment.

Based on the foregoing, the Cities' Motion for Summary Judgment is **GRANTED** and the State's Motion for Summary Judgment is **DENIED**. The Court hereby declares as follows:

1. R.C. 743.50 is unconstitutional under the Single Subject Rule of the Ohio Constitution.
2. R.C. 743.50 is unconstitutional under the Utility Clause of the Ohio Constitution.

3. R.C. 743.50 is unconstitutional under the Home Rule Amendment to the Ohio Constitution.

Pursuant to Civil Rule 58(B), the Clerk of Courts is directed to serve upon all parties notice and the date of this judgment. **This is a final appealable order; there is no just reason for delay.**

IT IS SO ORDERED.

Electronic notification to counsel of record.

Franklin County Court of Common Pleas

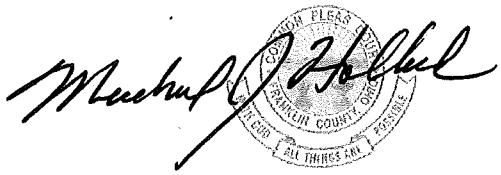
Date: 02-14-2019

Case Title: COLUMBUS CITY ET AL -VS- OHIO STATE

Case Number: 15CV007915

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Michael J. Holbrook