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I. STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus Curiae Village Bakery & Cafe and Cool Digs, Inc. (together “*Amici* Businesses”) are two small, independent businesses operating in the City of Athens (“the City”). The Village Bakery & Cafe, located at 268 East State Street, Athens, OH 45701 is a bakeshop and eatery featuring artisanal breads, gourmet groceries and classic breakfast and lunch menu offerings. Cool Digs, Inc., is a retail store with two locations, one at 596 East State Street and the other at 13 W. Union Street, both of them in Athens, Ohio. The Union Street store sells jewelry and gift items, while the State Street outlet sells gems, minerals, fossils, as well as hydroponic and outdoor gardening supplies and soil.

In their sales of merchandise to be taken from the stores, both businesses support the aims of, and actively comply with, the City of Athens’ Ordinance 0-25-23, which bans all Athens stores and vendors from providing or selling single-use plastic bags to their customers. The *Amici* Businesses also comply with and enthusiastically support another Athens ordinance, the Athens Community Bill of Rights and Water Supply Protection Ordinance, found in the Athens Code of Ordinances § 97.01 *et seq.* (“Community Bill of Rights” or “CBR”). The Community Bill of Rights was passed into law by a vote of the people in 2014.

The instant litigation affects a number of rights secured for the *Amici* Businesses by the Community Bill of Rights, including the rights to a healthy environment, the right to be free from chemical trespass, the rights of natural communities, and the right to self-government. The

Community Bill of Rights articulates the right to a healthy environment as follows: “All residents of the City of Athens possess a fundamental and inalienable right to a healthy environment, which includes the right to clean air, water, soil, flora, and fauna...and the right to protect the rights of natural communities and ecosystems upon which each resident is both intrinsically a part and dependent.” CBR § 97.01.04(B). The right to be free from chemical trespass is also articulated there: “All residents, natural communities, and ecosystems within the City of Athens possess a fundamental and inalienable right to be free from involuntary chemical trespass by any means, including but not limited to, trespass by manufactured chemicals, waste products, and radioactive substances used in, or resulting from, the extraction of shale gas or oil.” CBR § 97.01.04(C). Also, rights of natural communities are referenced: “Ecosystems and natural communities possess the right to exist and flourish within the City of Athens and its jurisdiction. The residents of Athens have the inalienable right to enforce and defend those rights to protect all ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, within the City of Athens or its jurisdiction.” CBR § 97.01.04(D). And the right to self-government is described this way: “All residents of the City of Athens possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people’s authority and consent.” CBR § 97.01.04(F).

Were the Court to impose a permanent injunction against the City's single-use plastic bag ban, it would violate the rights guaranteed to the *Amici* Businesses, and to all residents of the City of Athens, by the Community Bill of Rights.

II. SUMMARY OF ARGUMENT

The City of Athens had ample authority to enact the plastic bag ban under Ohio's Home Rule Amendment, the Ohio Constitution, and the Athens Community Bill of Rights. The City presumably will argue skillfully that the plastic bag ban is protected by the Home Rule Amendment and Ohio Constitution. So, the Businesses offer this Brief *Amicus Curiae* to argue alternatively that the plastic bag ban is also protected by the Athens Community Bill of Rights.

Because the manufacture and use of plastic bags pollute air, water, soil, flora, and fauna and the natural communities and ecosystems of which each Athens resident is both intrinsically a part and dependent upon, plastic bag use violates Athens residents' rights to a healthy environment, the right to be free from chemical trespass, and the rights of ecosystems to flourish within the City of Athens as secured by the Community Bill of Rights.

Furthermore, the plastic bag ban is an exercise of Athens residents' fundamental and inalienable right to self-government secured by the Community Bill of Rights. So, while the City of Athens certainly possessed the right to specifically ban single use plastic bags within its jurisdiction under the Home Rule Amendment and Ohio Constitution, the Community Bill of

Rights also protects the plastic bag ban. The Businesses urge this Court to recognize the multiple sources that legally empower the City of Athens to ban single-use plastic bags.

III. THE OHIO CONSTITUTION GIVES OHIO CITIZENS THE INALIENABLE RIGHT TO SEEK AND OBTAIN SAFETY

At its heart, this case is about whether the citizens of Ohio, through their local municipal governments, have the right to protect themselves, their communities, and the ecosystems they and their communities depend on from pollution and chemical trespass. A straightforward reading of the Ohio Constitution says they do. In fact, the very first rights enumerated in the Ohio Constitution are described this way: “All men are free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty...and seeking and obtaining happiness and safety.” Article I, § 1, Ohio Constitution.

Single-use plastic bags contribute to the global microplastic epidemic. Exposure to microplastics through inhalation or ingestion induces a variety of toxic effects into the human body including oxidative stress, metabolic disorder, immune response, neurotoxicity, as well as reproductive and developmental toxicity. Because of the ubiquity of products like single-use plastic bags, microplastics are similarly omnipresent. For example, *The Washington Post* recently reported that in one study microplastics were found in every single one of 62 placentas studied and, in another study, microplastics were found in every artery studied.

Single-use plastic bags, of course, do not grow on trees. They are not natural. They are manufactured by groups of humans (exclusively corporations). They require the combustion of significant amounts of fossil fuels, which produces the greenhouse gas emissions that threaten the Earth's very ability to support a habitable climate. And, they are spread around by humans (primarily corporations) importing these toxic products into communities such as Athens.

But the citizens of Athens do not want to be made sick by plastic bags. Nor do they want the habitat they depend on to be polluted and poisoned by plastic bags. When enacting Ordinance 0-25-23 banning single-use plastic bags, the City articulated its utterly reasonable legislative intent behind banning single-use plastic bags. The City asserted in its "whereas" recitations in the Ordinance that "numerous studies continue to show the negative environmental and health effects of plastics and the chemicals used to produce them;" that "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;" 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;" and that "single-use plastic bags cause operation problems at recycling processing facilities, landfills, and transfer stations, and contribute to litter throughout the City of Athens."

Now, the State of Ohio, serving the interests of those who benefit from the manufacture and distribution of toxic products (again, primarily corporations) has sued the City of Athens to ensure that these toxic products can be forced upon the Athens community. If this Court acquiesces to the State of Ohio's request that single-use plastic bags be forced upon the Athens community, then the peoples' inalienable right to seek and obtain safety will prove, after all, to be quite alienable.

IV. IF THE INALIENABLE RIGHT TO SEEK AND OBTAIN SAFETY DOES NOT PROTECT THE PLASTIC BAG BAN, THEN THE COMMUNITY BILL OF RIGHTS APPLIES

Recognizing the threat posed to their inalienable rights by the State of Ohio and corporate interests, in 1912 the people of Ohio approved, by vote, the Home Rule Amendment to the Ohio Constitution. Today, Article XVIII, Section 3 states that "municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." It is the supposed conflict between the Athens ordinance and state law that is being tested by this lawsuit.

In 2014, the people of Athens, through initiative petition and direct democracy, voted to enact the Athens Community Bill of Rights. As explained above, the Athens Community Bill of Rights gives the people of Athens the right to a healthy environment, the right to be free from chemical trespass, the right to enforce the rights of natural communities to exist

and flourish, and the right to self-government. Because plastic bags harm the environment, expose the people to chemical trespass, and violate the rights of natural communities to exist and flourish, the City of Athens did not need to legislate a specific single-use plastic bag ban. This is because rights delineated and secured by the Community Bill of Rights are self-executing and enforceable against private and public actors. CBR § 97.01.04(H). So, Athens' citizens and, indeed, the City itself could have sued the corporations and individuals responsible for spreading plastic bags throughout the city under the Community Bill of Rights for an injunction against the use of single-use plastic bags in Athens. The City might alternatively have promulgated an administrative regulation as part of its municipal health code. That Athens did not do so is not a legal flaw, but reveals the reserve of legal authority under the Community Bill of Rights.

Regardless, the City decided that the threat posed by single-use plastic bags was sufficiently urgent to legislate a separate ordinance explicitly banning single-use plastic bags. If the Court agrees with the State that Ordinance 0-25-23 exceeds the City of Athens' home rule authority, *Amici* Businesses urge that the Community Bill of Rights ordinance nonetheless provides the City and its residents with legal authority to ban plastic bags, and to dismiss the Complaint on that alternative ground.

The Bill of Rights was enacted pursuant to the peoples' "inalienable and indefeasible right to self-governance in the community where they reside." CBR § 97.01.04(G); see also Ohio

Const. Article I, § 2, which states, “All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary. . . .”

V. CONCLUSION

There is considerable irony in the notion that the doctrine of preemption is so bloated and exaggerated in Ohio municipal law that communities are not even free to police the contents of their local solid waste streams. Control over even the generation of garbage has been stripped from local governments by the Ohio General Assembly.

The *Amici* Businesses beg to differ. Athens’ duly-initiated and enacted Community Bill of Rights is the vehicle by which the Court should begin to regain and restore recognition of local community self-government here.

WHEREFORE, Amici Cool Digs and Village Bakery & Cafe pray the Court dismiss the Complaint and reinvigorate the inherent power of Ohio’s people to play a role in decisions affecting their communities.

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2024, I filed a copy of the foregoing Brief of *Amicus Curiae* Village Bakery & Cafe and Cool Digs, Inc. in the Court's electronic case filing system and that by its protocols all counsel of record were served. I further certify that on May 6, 2024, I also emailed a copy of the foregoing Brief to Lisa Eliason, Esq., City of Athens, leliason@ci.oh.athens.us, and to Julie Pfeiffer, Esq., julie.pfeiffer@ohioago.gov.

/s/ Terry J. Lodge

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