IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

CITY OF ATHENS, et al.,	:	
Plaintiffs,	:	
vs.	:	Case No. 17CVH11-10258
OHIO STATE TAX COMMISSIONER, et al.,	:	Judge Cain
Defendants.	:	

FINAL JUDGMENT ENTRY

Rendered this ____ day of February 2018.

CAIN, J.

This action is an Ohio constitutional challenge to numerous municipal tax provisions passed by the Ohio general assembly in H.B. 5[1] and H.B. 49. In particular, Plaintiffs object to H.B. 49's provisions for centralized collection of municipal net profits taxes[2]. For the purposes of this decision, the Court will refer to these provisions as the "Collection Provisions".[3] Plaintiffs filed their Complaint on November 16, 2017. Not long after, Plaintiffs requested that the Court grant a temporary restraining order as to the implementation of the Collection Provisions. After meeting with the Court, the parties entered into an agreed temporary restraining order on December 21, 2017. This order only limited the implementation of some of the Collection Provisions, not all of them. The Court then set a briefing schedule and this matter was set for a preliminary injunction

[1] H.B. 5 has been little mentioned by the parties. The Court, however, will include Plaintiffs' challenge to it in this decision so as to be thorough.
[2] These provisions are well known to the parties and the Court will not make a recitation of them here.
[3] This reference shall refer to the disputed provisions of both H.B. 5 and H.B. 49.

hearing, which occurred on February 12-13, 2018. After considering the arguments and testimony presented at the hearing, as well as the parties' briefs, the Court is now ready to render its decision in this matter.

After listening to two-days of testimony and argument, the Court has learned that there is no need to issue a preliminary injunction in this matter. Plaintiffs claim is that the Collection Provisions are unconstitutional on their face. Since this is so, there is no actual factual inquiry to make in this case. Everything comes down to a pure legal determination, *i.e.* the constitutionality of the Collection Provisions. If the Court finds them to be constitutional, then the Collection Provisions can be implemented and this matter is over. If the Court finds the Collection Provisions to be unconstitutional, then there is no need for an injunction because said provisions cannot be applied. Again, this matter would then be over. Therefore, all the Court needs to do is make a determinization as to constitutionality of the Collection Provisions.

This entire matter comes down to the resolution of one question: Does the general assembly have the constitutional authority to enact the Collection Provisions? The Court must begin by noting that a lawfully enacted statute is presumed to be constitutional. *See* Arnold v. City of Cleveland (1993), 67 Ohio St. 3d 35, 38. Since this is so, Plaintiffs must show that the Collection Provisions specifically violate a provision of the Ohio Constitution.

The constitutional provision that Plaintiffs argue that the Collection Provisions violate is Ohio Const. Art. XVIII §3, otherwise known as the Home Rule Amendment. Ohio Const. Art. XVIII §3 states:

> 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.

From just reading this section, it would seem that Plaintiffs have a good point. Unfortunately for Plaintiffs, the Court cannot stop here.

The Home Rule Amendment is not absolute. In the case of State ex rel. Gordon v. Rhodes (1951), 156 Ohio St. 81, the Ohio Supreme Court held:

> Article XVIII of the Constitution relates to municipal corporations. By Section 3 thereof all powers of local self-government are granted to municipalities. Section 7 thereof provides that any municipality may frame, adopt, or amend a charter for its government and may, subject to the provisions of Section 3 of said Article, exercise thereunder all powers of local self-government. These provisions of the Constitution are self-executing and require no legislation for their implementation. *Village of Perrysburg* v. *Ridgway, a Taxpayer*, 108 Ohio St., 245, 140 N. E., 595; *City of Middletown* v. *City Commission of Middletown*, 138 Ohio St., 596, 37 N. E. (2d), 609.
>
> The powers granted municipalities under the constitutional provisions above referred to are subject to the restrictions or limitations contained in any other provision in the Constitution…

Id. at 87-88. Via the above holding, the Court is required to look at other provisions found in the Ohio Constitution to determine if the general assembly has the power to implement the Collection Provisions. If the general assembly has the power, then Plaintiffs' Home Rule Amendment argument fails.

There are two provisions of the Ohio Constitution that are of importance here. The first is Ohio Const. Art. XII § 5, which states:

> No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.

The second is Ohio Const. Art. XVIII § 13, which states:

> Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

The above makes it clear that all taxes must be levied in pursuant to the law. Furthermore, the above makes it clear that the general assembly has the power to pass laws to limit the power of municipalities to levy taxes. It is with this law in mind that the Court will now render its decision.

The Court must rule in Defendants' favor. It is undisputed that the Collection Provisions deal with Ohio municipalities' ability to administer taxes, *i.e.* their ability to levy taxes. Plaintiffs can argue the definition of the word "levy" until their blue in the face, but using common sense the Court can only find that the Collections deal with the levying of taxes. Since this is so, the Court must find that the general assembly has the authority to enact the Collection Provisions. Plaintiffs' Home Rule Amendment challenge fails.

Before moving on, the Court will address the issue of abuse. Plaintiffs have cited to Ohio Const. Art. XIII § 6 for the proposition that it must be shown that municipalities have abused their power of taxation before the general assembly can overcome a Home Rule Amendment challenge. While Ohio Const. Art. XIII § 6 does use the would abuse, Ohio Const. Art. XVIII § 13 does not. Since this is so, the general assembly is not required to show that municipalities have abused their taxing authority before passing laws regulating municipal taxes.

Plaintiffs' other main argument deals exclusively with H.B. 49. Plaintiffs argue that the inclusion of the Collection Provisions in H.B. 49 violates the Ohio single subject rule. Ohio Const. Art II § 15(D) states:

> No bill shall contain more than one subject, which shall be clearly expressed in its title. No law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections amended shall be repealed.

H.B. 49 is an appropriations bill. Therefore, Plaintiffs argue that the placement of the Collection Provisions in H.B. 49 violates the Ohio one subject rule.

The Court must once again rule in Defendants' favor. In the case of City of Riverside v. State, 190 Ohio App. 3d 765, the Ohio Tenth District Court of Appeals nicely summarized the law as to a single subject challenge. In its opinion, the Tenth District held:

> Because the one-subject rule is directed, not at plurality, but at disunity in subject matter, " '[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, 715 N.E.2d 1062, quoting *Hoover v. Board of County Comm'rs* (1985), 19 Ohio St. 3d 1, 6, 19 Ohio B. 1, 482 N.E.2d 575. The pivotal question is whether the various topics unite to form a single subject for purposes of Section 15(D), Article II, Ohio Constitution. *Sheward* at 497. To conclude that an act violates the one-subject rule, a court must determine that the act "includes a disunity of subject matter such 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, 676 N.E.2d 506. Only "a manifestly gross and fraudulent violation" of the one-subject rule will result in invalidation of an enactment. *Nowak* at P54.
>
> Assessment of an act's constitutionality is primarily a matter of " 'case-by-case, semantic and contextual analysis' " and is based on the particular language and subject of the act rather than extrinsic evidence of fraud or logrolling. *Cuyahoga Cty. Veterans Serv. Comm. v. State*, 159 Ohio App.3d 276, 2004 Ohio 6124, 823 N.E.2d

> 888 ("CCVSC"), quoting *Dix* at 145; *Nowak* at P71; *Akron Metro. Hous. Auth. Bd. of Trustees v. State*, 10th Dist. No. 07AP-738, 2008 Ohio 2836, P19. In the context of constitutional, one-subject rules, the " 'term "subject" * * * is to be given a broad and extensive meaning so as to allow [the] legislature full scope to include in one act all matters having a logical or natural connection.'" *Sheward* at 498, quoting Black's Law Dictionary (6th ed.1990)...

Id. at 784-785. It is the Court's conclusion, in line with the above case law, that the Collection Provisions found in H.B. 49 have a logical and natural connection to the subject matter of H.B. 49, *i.e.* appropriations. Plaintiffs' single subject challenge fails.

All that remains is a plethora of other theories as to why the Collection Provisions are unconstitutional. These include conversion and illegal taking. The Court has found that the general assembly has the power to enact Collection Provisions and that it did not violate the single subject rule. With these determinations being made, all of Plaintiffs' other arguments loss merit. Everything comes down to whether the general assembly has the power or it doesn't. In this case, the general assemble has the power.

After review and consideration, the Court hereby finds that the Collection Provisions found in H.B. 5 and H.B. 49 are constitutional. As such, Plaintiff's claims fail. Judgment is hereby rendered in Defendants' favor as to all of Plaintiffs' claims. The Court's December 21, 2017 temporary restraining order is hereby dissolved. This is a final appealable order and there is no just cause for delay. The Clerk shall serve a copy of this decision on all parties in accordance with Civ. R. 58(B).

IT IS SO ORDERED.

Copies to:

Eugene L. Hollins
Frank J. Reed, Jr.
Counsel for Plaintiff

Jeffery C. Miller
Counsel for Defendants

Franklin County Court of Common Pleas

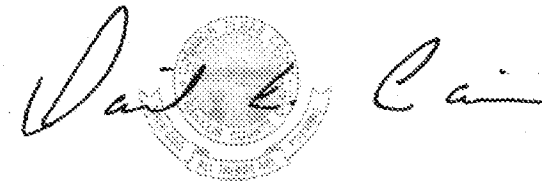
Date: 02-21-2018

Case Title: ATHENS CITY ET AL -VS- OHIO STATE TAX COMMISIONER ET AL

Case Number: 17CV010258

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge David E. Cain

Court Disposition

Case Number: 17CV010258

Case Style: ATHENS CITY ET AL -VS- OHIO STATE TAX COMMISIONER ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 17CV0102582018-01-1299980000
   Document Title: 01-12-2018-MOTION FOR PRELIMINARY INJUNCTION - PLAINTIFF: ATHENS CITY
   Disposition: MOTION DENIED

2. Motion CMS Document Id: 17CV0102582018-01-2699960000
   Document Title: 01-26-2018-MOTION FOR LEAVE TO FILE - DEFENDANT: OHIO STATE TAX COMMISIONER
   Disposition: MOTION RELEASED TO CLEAR DOCKET

3. Motion CMS Document Id: 17CV0102582018-02-1299980000
   Document Title: 02-12-2018-MOTION TO ADD PARTY - PLAINTIFF: ATHENS CITY
   Disposition: MOTION RELEASED TO CLEAR DOCKET