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**EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST AND
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This appeal presents three critical issues for the future of individual fundamental rights in Ohio: (1) whether a Municipality can restrict individual fundamental rights guaranteed in Article 1 §4 of the Ohio Constitution by enacting legislation through Article XVIII §3; (2) whether R.C. 2923.126 is a “general law” within the meaning of Article XVIII §3 of the Ohio Constitution; and (3) whether R.C. 9.68 expressing the Ohio General Assembly’s intent to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition pre-empts all local ordinances relating to these issues.

This case presents an issue of public and great general interest because it involves the question of whether a local municipality can impose additional restrictions on an individual openly carrying a firearm and/or individual licensed to carry a concealed firearm in this state or another state, beyond the Federal and Ohio Constitutions, and those set by the General Assembly, thereby further limiting the rights of the citizens of Ohio and other states. The determination of this question rests on whether this court finds the constitutionally permissible manner to carry a firearm in Ohio is “open carry” and whether R.C. 2923.126 is general law, which in turn preempts a local park rule that bans “any deadly weapon” in its park directly conflicting with the Federal and Ohio Constitution and the general law of the state of Ohio.

In this case, the Appellants concede that its local ordinance no. 2004-41 conflicts with state law, R.C. 2923.126 (Appellants’ Memorandum of Jurisdiction, pg. 7), and the enactment of local ordinance no. 2004-41 is an exercise of the City of Clyde’s police powers (Appellants’ Memorandum of Jurisdiction, pg. 7). Appellants argue R.C. 2923.16 is not a general law in spite

of the General Assembly's clear intent to comprehensively regulate in the area and pre-empt all local ordinances.

This Court stated in *Canton* in determining whether a state statute is a general law. See *Canton v. State* (2002), 95 Ohio St.3d 149. The court found that R.C. 2923.126: (1) is part of a statewide and comprehensive legislative enactment; (2) set forth police regulations; and (3) prescribes a rule of conduct upon citizens generally. The court found that R.C. 2923.16 is a general law because the General Assembly clearly indicated its intent that it applies to all parts of the state alike and operate uniformly throughout the state. The court's reasoning is correct because R.C. 2923.126 *does* apply to all parts of the state alike and it operates uniformly throughout the state satisfying the last prong and meeting the definition of a general law.

The decision of the court of appeals upholds the rights of citizens of this state and other states to lawfully carry firearms. It effectively precludes each individual municipality from enacting its own legislation prohibiting open or concealed carry in locations of its choosing, despite the fact that the constitutions of the United States and Ohio, and the General Assembly's specific grant to citizens the right to carry concealed firearms everywhere in the State except in a very few identified locations. By its ruling, the court of appeals acknowledged the legislative intent, accepted the plain meaning of the Act, and determined that R.C. 2923.16 met the definition of a general law. The decision eliminates the unmanageable flow of non-uniform, contradictory local laws among the municipalities of this state in direct conflict with the general laws of the State enacted by the General Assembly.

The court of appeals' decision should be upheld so that citizens carrying firearms openly, and concealed carry licensees will be able to rely on the Ohio constitution and the state-issued concealed carry licenses. Affirming the court of appeals decision will end the practice of local

governments ignoring the Ohio constitution and General Assembly's clear intent to enact comprehensive legislation on the places where an individual is precluded from carrying a concealed firearm. Additionally, it will clarify the law by eliminating the chaotic and uncoordinated mass of conflicting ordinances and regulations applicable to firearm ownership, transportation and carry.

A firearm owner and concealed carry licensee should be permitted to travel freely throughout the state without facing harassment and threats of criminal charges because activist local municipalities have enacted arbitrary ordinances affecting the constitutionally protected rights to "bear arms," a subject of which the General Assembly has enacted comprehensive legislation. The only way a firearm owner and concealed carry licensee of this State or another State can currently avoid these serious implications, while still exercising the right to carry, is for the individual to thoroughly research and understand the complex laws of each municipality before traveling within the state. Requiring an average citizen who is unfamiliar with legal terms and statutory interpretation, to understand countless local laws, or to otherwise risk possible criminal prosecution is both preposterous and unrealistic. If a firearm owner fails to research or understand the law of each municipality, he could face criminal prosecution simply by unknowingly or mistakenly entering an area where that municipality forbids firearms.

The decision of the court of appeals ends the prosecution of honest, law-abiding citizens. This result is clearly what the General Assembly intended when it preempted and significantly occupied the field of concealed carry regulation in Ohio by enacting R.C. 2923.126 and R.C. 9.68.

The public's interest is affected greatly by the court of appeals' decision because it construes the plain meaning of R.C. 2923.126 and R.C. 9.68, and accepts the General

Assembly's intent that regulations on firearm transportation, ownership and carry be uniform throughout the state. The decision ultimately stops individual municipalities from exceeding the powers of local self-government and exercise police power that conflicts with the Ohio constitution and a statute intended to be a general law of the state. It supports the limited scope and purpose of the home-rule amendment in Section 3, Article XVIII of the Ohio Constitution, and therefore affects the public and/or is of great general interest. This court should affirm the court of appeals' decision.

This case also involves the substantial constitutional question whether City of Clyde ordinance no. 2004-41 facially violates the Second Amendment to the United States Constitution and Section 4, Article I of the Ohio Constitution. The ordinance is an attempt to prohibit the carrying of all firearms, concealed or openly carried, within its City parks.

Section 4, Article I of the Ohio Constitution grants the citizens of Ohio a fundamental individual right to bear arms. *Arnold v. Cleveland*, (1993) 67 Ohio St.3d 35. The decision of the lower court supports a citizen of Ohio or from another state who tries to exercise that fundamental right. That decision of court of appeals is supported by this Court's decision in *Arnold* and precludes municipalities throughout Ohio from impermissibly prohibiting the carrying of firearms everywhere within its municipal boundaries.

In conclusion, this case puts in issue the right to bear arms in the United States and Ohio constitutions, the General Assembly's ability to enact laws of general nature, honor other states concealed carry licenses, and presents the question of whether a municipality can promulgate a rule that directly conflicts with a general law of the State and infringes on the rights of Ohio's citizens set forth in both the State and Federal Constitutions. In order to preserve and ensure that principles enumerated in the constitutions of Ohio and the United States continue to be honored

by municipalities throughout Ohio, this Court must grant jurisdiction to hear this case and review the affirm decision of the court of appeals.

STATEMENT OF THE CASE AND FACTS

A. Ohio's Concealed Carry Law

On January 7, 2004 the 125th General Assembly passed Am.Sub.H.B. No. 12 ("Concealed Carry Law"), as part of comprehensive and uniform statewide legislation, affirmatively granting qualified individuals the right to carry concealed handguns in Ohio. Am.Sub.H.B. No. 12 became effective April 8, 2004 and was the first law in Ohio's history to allow for a Concealed Handgun License ("CHL"). Am.Sub.H.B. No. 12 implements a comprehensive and uniform statewide licensing system for the carrying of concealed handguns. While expressly granting the right to carry concealed handguns, Am.Sub.H.B. No. 12 prohibits concealed carry in certain places and provides that local entities may *not* enact ordinances or resolutions that restrict locations in which holders of valid CHL(s) may carry concealed handguns. Section 9, Am.Sub.H.B. No. 12.

R.C. 2923.125 provides the process and requirements for obtaining a license to carry a concealed handgun. R.C. 2923.126(A) provides that, "[e]xcept as provided in divisions (B) and (C) of this section, a licensee who has been issued a license under section 2923.125 or 2923.1213 of the Revised Code may carry a concealed handgun anywhere in this state" The exceptions listed in R.C. 2923.126(B) and (C) are as follows:

"(B) A valid license . . . does not authorize the licensee to carry a concealed handgun into any of the following places:

"(1) A police station, sheriff's office, or state highway patrol station, premises controlled by the bureau of criminal identification and investigation, a state correctional institution, jail, workhouse, or other detention facility, an airport passenger terminal . . . ;

“(2) A school safety zone . . . ;

“(3) A courthouse or another building or structure in which a courtroom is located . . . ;

“(4) Any room or open air arena in which liquor is being dispensed . . . ;

“(5) Any premises owned or leased by any public or private college, university, or other institution of higher education . . . ;

“(6) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

“(7) A child day-care center, type A family day-care home, a type B family day-care home, or a type C family day-care home . . . ;

“(8) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;

“(9) Any building that is owned by this state or any political subdivision of this state, and all portions of any building that is not owned by any governmental entity listed in this division but that is leased by such a governmental entity listed in this division;

“(10) A place in which federal law prohibits the carrying of handguns.

“(C)(1) Nothing in this section shall negate or restrict a rule, policy, or practice of a private employer that is not a private college, university, or other institution of higher education concerning or prohibiting the presence of firearms on the private employer’s premises or property, including motor vehicles owned by the private employer. Nothing in this section shall require a private employer of that nature to adopt a rule, policy, or practice concerning or prohibiting the presence of firearms on the private employer’s premises or property, including motor vehicles owned by the private employer.

“* * *

“(3) The owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. A person who knowingly violates a posted prohibition of that nature is

guilty of criminal trespass in violation of division (A)(4) of section 2911.21 of the Revised Code and is guilty of a misdemeanor of the fourth degree.”

Under R.C. 2923.12(G)(1), penalties for violating the prohibitions enumerated in R.C. 2923.126(B) range from a first degree misdemeanor to a fifth degree felony.

B. Clyde Codified Ordinance 2004-41.

On May 18, 2004, the City of Clyde, Ohio passed Clyde Codified Ordinance 2004-41, which prohibits CHL holders from carrying concealed handguns in city parks and is a direct response to Am.Sub.H.B. 12. Clyde Codified Ordinance 2004-41 provides, in pertinent part, that:

(a) no person located within the confines of any City Park shall knowingly carry or have, on or about his person or readily to hand, any deadly handgun, irrespective of whether such person has been issued a license to carry a concealed weapon pursuant to Ohio R.C. 2923.125 or pursuant to a comparable provision of the law of any other state.

A violation of Clyde Codified Ordinance 2004-41 is a misdemeanor of the first degree.

Clyde Codified Ordinance 2004-41 prohibits the carrying of a handgun in a city park, which is permitted by the Concealed Carry Law and the reciprocity agreements entered into between the attorney general of this state and other states. Additionally, the penalty for violating Clyde Codified Ordinance 2004-41 differs from the Concealed Carry Law.

C. Revised Code Section 9.68

On March 14, 2007, R.C. 9.68 went into effect.

Sec. 9.68. (A) The individual right to keep and bear arms, being a fundamental individual right that predates the United States Constitution and Ohio Constitution, and being a constitutionally protected right in every part of Ohio, the general assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer

of firearms, their components, and their ammunition. Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.

(B) In addition to any other relief provided, the court shall award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section.

(C) As used in this section:

(1) The possession, transporting, or carrying of firearms, their components, or their ammunition include, but are not limited to, the possession, transporting, or carrying, openly or concealed on a person's person or concealed ready at hand, of firearms, their components, or their ammunition.

(2) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(D) This section does not apply to either of the following:

(1) A zoning ordinance that regulates or prohibits the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for residential or agricultural uses;

(2) A zoning ordinance that specifies the hours of operation or the geographic areas where the commercial sale of firearms, firearm components, or ammunition for firearms may occur, provided that the zoning ordinance is consistent with zoning ordinances for other retail establishments in the same geographic area and does not result in a de facto prohibition of the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for commercial, retail, or industrial uses.

ARGUMENT IN OPPOSITION TO APPELLANT'S PROPOSITIONS OF LAW

Appellant's Proposition of Law No. I: Revised Code Section 2923.126 is not a general law.

(A) Revised Code Section 2923.126 and R.C. 9.68 are general laws.

Appellant's incorrectly assert that R.C. 2923.126 and R.C. 9.68 are not general laws.

"[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*, 95 Ohio St.3d at 151. In its opinion, the Court of Appeals correctly found that all three prongs were met.

Appellant concedes that prongs one and two are met, but argues that the third prong is not met. In order to be considered a “general law” a statute must satisfy the following four requirements:

“(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) to prescribe a rule of conduct upon citizens generally.”

Canton, 95 Ohio St.3d at Syllabus. The court of appeals correctly held that R.C. 2923.126 and R.C. 9.68 were general laws.

The court recognized that the General Assembly intended to “ensure uniformity throughout the state regarding the transportation, ownership and carry of firearms in the qualifications for a person to hold a license to carry a concealed handgun and the authority granted to a person holding a license of that nature” *Ohioans For Concealed Carry, Inc., et al. v. City of Clyde, et al.*, 2007 WL 1098347, ¶12 (Ohio App. 6 Dist.), 2007-Ohio-1733 (Slip Copy) citing R.C. 9.68 effective March 14, 2007. The court accepted the stated intent of the General Assembly in reaching its decision. It focused on the fact that R.C. 2923.126 and R.C. 9.68 are intended to operate uniformly throughout the state.

This rationale is correct because “[t]he 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 non-uniform classification if such be arbitrary, unreasonable, or capricious.” *Garcia v. Siffrin Residential Assn.* (1980), 63 Ohio St.2d 259, 272, citing *Miller v.*

Korns (1923) 107 Ohio St. 287. In this case, the exception permitting private property owners to ban concealed carry on its property is a proper classification that, although it results in different treatment of concealed carry license holders on private property, is in no way arbitrary, unreasonable, or capricious. It provides all private property owners with the authority to preclude concealed carry on their property.

The Ohio Supreme Court has previously stated that general laws are enacted “to safeguard the peace, health, morals, and safety, and to *protect the property of the people of the state.*” *Schneiderman v. Sesanstein* (1929), 121 Ohio St. 80, 82-83 (emphasis added). Considering that this Court has said “protect[ing] property of the people” is a goal in enacting general laws, it logically follows that a general law should refrain from eroding the citizens’ property rights. Failing to include the exception for private property owners would have resulted in the creation of a general law that contradicts one of the underlying purposes of general laws.

Private property owners are vested a special bundle of rights in their land, one of the most important being the right to use one’s property. It is well-settled that undue restrictions on a private landowner’s land, in a way that deprive him of the usual rights, privileges and incidents of ownership and possession, is against policy of the law. *Mahrt v. First Church of Christ, Scientist* (1955), 75 Ohio L. Abs. 5, 142 N.E.2d 567. It would be improper for the General Assembly to contravene property ownership rights by attempting to regulate concealed firearms on private property.

Additionally, the exception for private property owners is required in order to prevent the statute from being declared unconstitutional under the Fourteenth Amendment. A failure to include the exception would have amounted to an unconstitutional exercise of police power

because the statute would have otherwise affected and unduly interfered with private property. *Grieb v. Dept. of Liquor Control* (1950), 153 Ohio St. 77.

The exception was necessary and justified for various reasons and was in no way arbitrary, unreasonable, or capricious. Despite the fact that the exception allows property owners to exercise discretion, R.C. 2923.126 still meets the uniformity standard required of a general law. R.C. 2923.126 applies and operates uniformly within the state because it gives the entire class of private property owners throughout the state the right to decide how to regulate concealed weapons on their individual property. Distinguishing private property owners from public property held in trust for the public, and treating them different is not an arbitrary, unreasonable, or capricious classification based on the significance of private property ownership rights. It is irrelevant that the result may not be a uniform one. It is sufficient that statute applies to these individual's in a uniform manner by giving them all the right to exercise their discretion.

The Supreme Court of Ohio has made it clear a statute is general and uniform, even when it consists of reasonable classifications that, "in practice it might result in some inequality." *Steele, Hopkins & Meredith Co. v. Miller* (1915), 92 Ohio St. 115. Therefore, even though each private property landowner may not implement the same policy regarding concealed handguns, thereby resulting in some inequality, the statute is still said to operate uniformly.

Based on the foregoing, it is clear that the court of appeals correctly decided that R.C. 2923.126 operates uniformly throughout the state. R.C. 2923.126 is a general law, which directly conflicts with the Clyde ordinance.

Moreover, R.C. 968 emphasizes and preempts all local ordinances relating to the transportation, ownership and carry of firearms or their components. The appellate court

correctly concluded that the General Assembly intended to ensure uniform application and enforcement of its firearms laws in Ohio. Consequently, Clyde's ordinance is invalid.

(B) Clyde Codified Ordinance 2004-41 violates the Second Amendment to the United States Constitution and Section 4, Article I of the Ohio Constitution.

Clyde Codified Ordinance 2004-41 bans the carry of all firearms, in violation of the Second Amendment to the United States Constitution and Section 1, Article 4 of the Ohio Constitution. Every citizen of Ohio has the fundamental right to bear arms. *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35. In order to be constitutional, a statute that infringes on a constitutional right must pass strict scrutiny. To survive strict scrutiny, a statute must be necessary and narrowly tailored to fit a compelling government interest. *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415.

This Court has found that a city's interest in laws or ordinances passed by virtue of a city's police power is in protecting the health, safety, morals, or general welfare. *Arnold*, 67 Ohio St.3d at 46. Appellant has not provided any evidence that carrying a firearm in the park by law abiding citizens, concealed or otherwise, puts the general health, safety, or welfare of the public at risk. More importantly, Clyde Codified Ordinance 2004-41 is not necessary or narrowly tailored to meet any governmental interest. Rather, it is overly broad, encompassing the carry of all firearms whether concealed or openly carried in plain sight or whether the individual is properly licensed to carry concealed.

In a similar situation, this Court upheld an ordinance as reasonable because it was attempting to limit the accessibility of certain generally recognized dangerous firearms. *Arnold* 67 Ohio St.3d at 48. However, this Court held that "[c]learly, the city would have exceeded its authority under Section 3, Article XVIII, and would have violated Section 4, Article I if it had

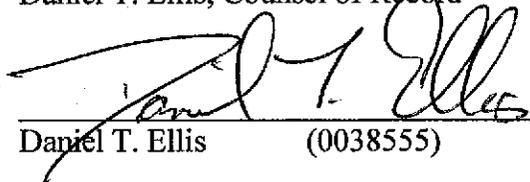
banned *all* firearms” because the ordinance would have acted as a prohibition on a fundamental right. *Id.* at 49. Clyde Codified Ordinance 2004-41 bans all lawful carry. Therefore, this Court must find that Clyde Codified Ordinance 2004-41 does not pass strict scrutiny and is unconstitutional.

CONCLUSION

For the reasons discussed above, this case involves matters of great public and general interest and has several substantial Constitutional questions. Appellant respectfully requests that this Court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

Daniel T. Ellis, Counsel of Record

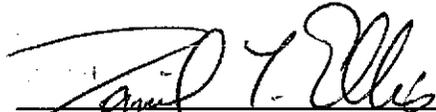


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Memorandum in Support of Jurisdiction of Appellees Ohioans for Concealed Carry, Inc., et al.* has been served by ordinary U.S. Mail this 25th day of June, 2007 upon Barry W. Bova, 817 Kilbourne Street, P.O. Box 448, Bellevue, Ohio 44811, counsel for Appellant, L. Kenneth Hanson, III, Firestone, Brehm, Hanson, Wolf, Young, LLP, 15 West Delaware Street, Delaware, Ohio 43015, counsel for Appellee, Ohioans for Concealed Carry, Inc., and Sharon A. Jennings, Senior Deputy Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215, Counsel for Ohio Attorney General Mark Dann.



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