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INTEREST OF AMICUS CURIAE

This case is of utmost importance to the City of Cleveland. It involves a statute, i.e. R.C. § 9.68, which directly attacks Cleveland's constitutional home rule powers and jeopardizes the safety and welfare of its citizens. As identified in the State's memorandum in support of jurisdiction, Cleveland is currently challenging the constitutionality of R.C. § 9.68 in *City of Cleveland v. State of Ohio*, Cuy. Cnty Common Pleas, Case No. CV-07-618492.¹

Revised Code § 9.68 operates to nullify all local gun regulation regarding the ownership, possession, purchase, sale, transfer, transport, storage, or keeping of any firearm, part of a firearm, its components, and its ammunition, even in the absence of a conflict with a general state law.² See R.C. § 9.68. Indeed, R.C. § 9.68 impacts not only concealed carry of handguns but also, among other things, local regulations concerning open carry of handguns and other firearms in urban settings, the sale and possession of assault weapons, and possession of handguns by minors. And because the law purports to stand for outright preemption in the field of firearms—the exact premise the lower court erroneously relied upon in upholding R.C. § 2923.126 and in striking the Clyde ordinance—municipalities, including Cleveland, will be stripped of their long standing and well recognized home rule powers in the field of firearms unless this Court declares R.C. § 9.68 unconstitutional.

For an urban and populated community like Cleveland, the ability to enact and enforce reasonable local firearm regulations is necessary for the safety and welfare of its citizens.

Indeed, this Court has repeatedly recognized that a municipality's reasonable exercise of police

¹ Cleveland's challenge, by way of its complaint for declaratory judgment, is to R.C. § 9.68 only.

² As stated herein and throughout the brief, the use of the term "firearm regulations," "firearm control," or the "the field of firearms" refers to the ownership, possession, purchase, sale, transfer, transport, storage, or keeping of any firearm, part of a firearm, its components, and its ammunition as referenced in R.C. § 9.68(A).

power in the field of firearms is not only a right but a duty. See *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, 47 (“Legislative concern for public safety is not only a proper police power objective – it is a mandate.”). Recognizing the conditions unique to its urban environment, Cleveland has legislated in the field of firearms to provide for the maximum safety and welfare of its citizens. Cleveland’s firearm ordinances include, among other things, the ban on assault weapons upheld in *Arnold*, prohibition on open carry in defined urban public settings, the registration of all handguns, and a prohibition on minors possessing firearms. See Cleveland Codified Ordinances (“C.C.O.”) §§ 628.03, 627.09, 627.10, 627.08, and 674.05. The State has adopted no comparable general laws regulating in these areas and does not do so through enactment of R.C. § 9.68.

Cleveland is filing this brief to urge this Court to explicitly recognize that R.C. § 9.68 is unconstitutional. If the State desires to exclusively occupy the firearms regulatory arena in areas it has never regulated, thereby displacing long standing local public safety ordinances, the General Assembly is required to enact corresponding general laws. The Ohio Constitution does not bestow the General Assembly with express powers of preemption in this or other police regulatory areas under Section 3 Article XVIII. Because the State seeks with R.C. § 9.68 to generally nullify and preempt all municipal firearm ordinances without regard to the conflict analysis required by the Ohio Constitution—the ability of Cleveland and other municipalities to legislate for the public safety and welfare of their residents with respect to firearm issues is at risk.

STATEMENT OF THE CASE AND FACTS

Amicus Curiae, the City of Cleveland (“Cleveland”), incorporates the Statement of Facts submitted by Appellant City of Clyde in this case and adds the following facts that specifically relate to R.C. § 9.68:

In enacting R.C. § 9.68, the General Assembly improperly attempts to withdraw municipalities’ home rule power in the field of firearms. The statute provides in part:

Except as 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.

R.C. § 9.68(A).

Noticeably absent from the statute is any reference to municipal ordinances or local regulations in the regulatory mix; rather, the only designated authority for enforcement of firearm regulations is federal or state law. The statute seeks nothing less than the elimination of all local authority related to firearm regulation, and bars municipalities from enacting local safety regulations in the area, even when the State has not regulated the specific matter addressed by a local ordinance, and even when there is no conflict between the ordinance and a general state statute.

As the above referenced language makes clear, Revised Code § 9.68 is not limited to concealed carry laws, and further specifically emphasizes that this withdrawal of local authority in the field of firearms would apply to local regulation of the open carry of firearms:

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.

R.C. § 9.68(C)(1) (emphasis added).

The purported purpose of the law is to provide for “uniform laws” throughout the state in the field of firearms. R.C. § 9.68(A). Revised Code § 9.68, however, does not actually regulate any specific firearm issue, including concealed carry. Instead, the attempted effect of the statute is to unconstitutionally withdraw municipalities’ authority to exercise local police power flowing directly from the Ohio Constitution in the field of firearms. As further evidence of the State’s intent to deter all exercise of local constitutional home rule powers in the reasonable regulation of firearms, the statute additionally mandates that a court award costs and attorney fees to any party that prevails in a challenge to a city ordinance, rule, or regulation as being in conflict with R.C. § 9.68:

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.

R.C. § 9.68(B).

Based on the mere declarations contained in R.C. § 9.68, including the General Assembly’s stated desire for “uniform laws,” the court of appeals abandoned its earlier statutory analysis in *Toledo v. Beatty*, Lucas App. No. L-05-1319, 2006-Ohio-4638, and concluded without further analysis that the General Assembly intended for R.C. § 2923.126 to apply uniformly throughout the state. The court did not find, however, that R.C. § 2923.126 actually applied uniformly throughout the state, and offered no explanation for abandoning its earlier analysis beyond relying on the enactment of R.C. § 9.68.

LAW AND ARGUMENT

PROPOSITION OF LAW:

Revised Code § 9.68 is unconstitutional under Section 3, Article XVIII of the Ohio Constitution because the statute improperly attempts to expressly preempt—even in the absence of any conflict with general laws—local home rule authority to regulate firearms and therefore the statute cannot make R.C. § 2923.126 a general law that displaces the Clyde ordinance.

Section 3, Article XVIII of the Ohio Constitution (“the Home Rule Amendment”) grants municipalities the power “* * * to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Ohio Const. Sec.3, Art. XVIII. This Court has repeatedly recognized that this power of home rule, “expressly conferred upon municipalities,” cannot be withdrawn by the General Assembly. *Fondessy Ents., Inc. v. Oregon* (1986), 23 Ohio St.3d 213, 215, citing *Akron v. Scalera* (1939), 135 Ohio St. 65, 66. See also *West Jefferson v. Robinson* (1965), 1 Ohio St.2d 113, paragraph one of the syllabus. “[O]nly general laws in conflict therewith upon the same subject matter” can limit this authority. *Id.* Indeed, it is long recognized that the State and municipalities can exercise “the same police power.” *Greenburg v. Cleveland* (1918), 98 Ohio St. 282, 286.

With R.C. § 9.68, the General Assembly, however, seeks to improperly preempt all municipal regulation in the field of firearms by declaring state and federal law as the only governing authority with respect to “the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition.” R.C. § 9.68(A). The statute, thus, prevents a municipality from enforcing any of its own long standing ordinances related to firearms in these areas, even in the absence of a conflict with a general law. This attack on municipalities’ right to self-government, involving matters of local police regulation, is the exact action the Home Rule Amendment was enacted to

combat. See *Porter v. Oberlin* (1965), 1 Ohio St.2d 143, quoting *Allion v. Toledo* (1919), 99 Ohio St. 416, syllabus (“Local authorities are presumed to be familiar with local conditions and to know the needs of the community.”). Indeed, this Court has repeatedly recognized that in matters involving local police, safety, and health regulations, municipalities possess the power to locally regulate and this authority should not be undone by members of the General Assembly who do not even reside in the municipality’s boundaries. *Id.*

A. The General Assembly does not have blanket preemption powers to deprive municipalities of their constitutional right to enact and enforce local firearm regulations.

Ohio law does not recognize the General Assembly as having outright preemption powers in the field of firearms. This Court has repeatedly recognized that mere declarations of the General Assembly of its intent to preempt a field of legislation does not “trump” the constitutional authority of municipalities to enact legislation under the Home Rule Amendment. *American Fins. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043 (“*AFSA*”), ¶ 31, citing *Fondessy*, 23 Ohio St.3d at 216. Under the Home Rule Amendment, municipalities are expressly granted the authority to enact local police regulations and this authority “cannot be extinguished by a legislative provision.” *Fondessy*, *supra* at 216; see also *Freemont v. Keating* (1917), 96 Ohio St. 468 (invalidating state law as violating Home Rule Amendment because the law precluded local authorities from exercising police power concurrently with the State).³

Although municipalities’ constitutional right to exercise local police power is not absolute, this Court has repeatedly recognized that the General Assembly may not abrogate this power by way of express preemption. *AFSA*, *supra* at ¶ 31; *Fondessy*, *supra* at 216. As stated by this Court:

³ Since the Home Rule Amendment’s inception, the Ohio Supreme Court has recognized that the General Assembly “cannot deprive a municipality of its constitutional rights.” *Freemont*, at syllabus.

If [state laws] were elevated to a level of ‘express preemption’ (its level as a result of the judgments of the courts below), no police power ordinance in the related field would survive long enough to face a conflict test against a state statute.

Fondessy, supra at 216.

In rejecting the notion that the General Assembly can entirely preempt a municipality’s authority to exercise its local police power by merely declaring the matter of statewide concern or declaring its desire to do so, this Court applies a general law analysis and conflict test rather than the preemption doctrine, to determine whether a state statute can properly limit a municipality’s local police power under the Home Rule Amendment. See e.g. *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, ¶¶ 9-10, citing *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005; see also *AFSA*, supra; *Fondessy*, supra; *West Jefferson v. Robinson* (1965), 1 Ohio St.2d 113; *Cincinnati v. Hoffman* (1972), 31 Ohio St. 2d 163; *Cleveland v. Raffa* (1968), 13 Ohio St.2d 112; *Greenburg v. Cleveland* (1918), 98 Ohio St. 282 (applying a conflict and general law analysis in all these cases despite efforts to invoke preemption doctrine). The conflict and general law analysis requires the Court to look beyond the preemptive language and determine whether the statute is a general law and whether the local ordinance is an exercise of police power. *AFSA*, supra at ¶ 31; *Fondessy*, supra at 216. If the state statute is a general law and a conflict exists between the two provisions, then the ordinance must yield to the state statute. *Canton*, 95 Ohio St.3d 149 at ¶ 9, citing *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted* (1992), 65 Ohio St.3d 242, 244-245; *Auxter v. Toledo* (1962), 173 Ohio St. 444. If, however, the statute is not a general law, then the statute constitutes an unconstitutional attempt to limit the municipality’s legislative home rule powers and will be struck down. See *Canton*, supra at ¶ 10.

In enacting R.C. § 9.68, the General Assembly seeks to avoid any general law and conflict analysis and purports to expressly preempt all local firearm regulation by declaring its desire for uniform laws and eliminating, without the benefit of a conflict analysis, all local regulations in the field of firearms:

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.

R.C. § 9.68(A).

The statute further provides that, in the alleged interest of “uniform laws,” no other regulations of firearms shall apply to Ohio residents other than those provided under state and federal law. *Id.* Here, the statute unlawfully violates Section 3, Article XVIII by purporting to nullify all local firearm regulations even in the absence of a conflict with a general law of the state. Thus, the General Assembly unlawfully seeks to avoid the “conflict analysis” and “general law analysis” by purporting to strike down all municipal regulations related to firearms and to foreclose municipalities from exercising any local police power related to this topic. This is the very action that the Ohio Supreme Court has repeatedly declared unconstitutional:

If the provisions of * * *[the legislation in question] do preclude a home rule municipality, with police power guaranteed it by the Ohio Constitution, from enacting any and all legislation related to the state statute, then that provision of the state law must be ruled unconstitutional.

Fondessy, 23 Ohio St.3d at 216; see also *Keating*, 96 Ohio St. 468, syllabus (recognizing that state law cannot preclude municipality from regulating the speed of motor vehicles—a municipality has the right to enforce regulations that do not conflict with a general state law).

Here, falling victim to the General Assembly's declarations in R.C. § 9.68, the Sixth District summarily concluded that the statute preempted all local firearm regulation and consequently found Clyde Ordinance 2004-41 invalid. See *Ohioans for Concealed Carry, Inc. v. Clyde*, Sandusky App. Nos. S-06-039, S-06-040, 2007-Ohio-1733, ¶ 12. The court reached this decision without even considering the constitutionality of R.C. § 9.68, let alone applying the requisite general law analysis between the Clyde ordinance and the state statute. *Id.* The outcome in this case is the exact confusion and misapplication of well-settled home rule precedent that R.C. § 9.68 invites and will continue to perpetuate unless declared unconstitutional.

- 1. Even treating R.C. § 9.68 as a limiting provision and reading it in conjunction with other state firearm laws, it still constitutes an unlawful attempt to preempt because the statute forecloses local regulation in an area where the State has utterly failed to enact a comprehensive scheme.**

It is anticipated that the State will attempt to defend the constitutionality of R.C. § 9.68 by arguing that it is virtually identical to the limiting provision at issue in *AFSA*, i.e. R.C. § 1.63, and therefore should be upheld under *AFSA*. This argument, however, fails to acknowledge the critical distinction between the two cases: a comprehensive scheme of regulations related to the purported limiting provision.

The *AFSA* case involved a challenge to Sub.H.B. No. 386, which enacted a series of new sections to the Ohio Revised Code dealing with the subject of predatory lending. *AFSA*, 112 Ohio St.3d 170, ¶¶ 1-3. In addition to the limiting provision contained in R.C. § 1.63, which expressed the General Assembly's intent to limit municipalities' ability to regulate predatory

loans, the General Assembly enacted numerous new sections (R.C. §§ 1349.25 through 1349.37), which set forth specific regulations and standards governing predatory loans. *Id.* In upholding the legislation, this Court found that the legislation was “clearly part of comprehensive statewide legislative regulation” because the legislation enacted a series of laws that specifically regulated the area R.C. § 1.63 was limiting. *Id.* at ¶ 33.

Here, unlike the legislation at issue in *AFSA*, the General Assembly did not enact a series of new laws related to statewide regulation in the field of firearms. In fact, the only new statute that the General Assembly enacted as part of Sub.H.B. No. 347 was R.C. § 9.68—the limiting provision.⁴ Any argument that Sub.H.B. No. 347 enacted a comprehensive scheme in the entire field is unsupported. Additionally, unlike the situation in *AFSA*, where the limiting provision served as a basis for demonstrating an implied conflict between a local ordinance and a corresponding state statute, here R.C. § 9.68 seeks to limit and preempt all local firearm regulation even when the State has no comparable corresponding regulation. *Id.* Because R.C. § 9.68 seeks to eliminate all local regulations in the field of firearms, well beyond concealed carry laws, and the General Assembly has not enacted a comprehensive scheme of regulations related to the entire field of firearms, the statute cannot stand.

As recognized by Justice O’Connor, who examined Ohio’s firearm regulations in-depth the week prior to the General Assembly’s enactment of Sub.H.B. 347, Ohio has no comprehensive scheme of firearm regulation and “has barely touched upon the subject of firearm

⁴ As for any argument by the State that, in light of *AFSA*, a comprehensive scheme of firearm regulations exist because there are more state laws governing firearms than predatory loans, this argument has no merit. In *AFSA*, this Court did not apply a magic number equation to determine whether a comprehensive scheme existed: The Court looked at the relevant regulations in the field. Here, R.C. § 9.68 operates to eliminate local regulation in areas where the General Assembly has not regulated. And the mere fact that the General Assembly has regulated some subfields of firearms is insufficient to save R.C. § 9.68.

possession, use, transfer, and ownership.” *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, ¶ 52 (concurring opinion by Justice O’Connor).⁵ Justice O’Connor further noted that Ohio pales in comparison to other states in the regulation of firearms and has historically relied on municipal and federal regulations to fill in the gaps:

Ohio legislation currently touches on only a handful of areas in regard to firearms[.] * * * Municipalities have been left to fill in the gaps left by Ohio law regarding possession, transfer, and use of firearms to such a degree that I cannot say that the legislation intended to occupy the field of firearms regulation.

Id. at ¶¶ 51-52.

As a result of this nonexistent comprehensive scheme, R.C. § 9.68, if allowed to stand, would jeopardize the safety of municipalities across the state because it clearly aims to nullify local ordinances, even when the State has no comparable corresponding state regulation. Unlike many local municipalities, the State does not regulate the registrations and licensure of a firearms dealer, does not require a person to obtain a permit or license before obtaining a gun, and has no statute requiring a background check before the purchase or transfer of a firearm. See *Baskin*, supra at ¶¶ 51-52 (concurring opinion of Justice O’Connor). Further, the State has not enacted any laws reasonably regulating open carry of firearms in urban settings. Revised Code § 9.68 does not fill in these gaps currently addressed by municipalities, such as Cleveland, but attempts by unconstitutional fiat to eliminate the City’s historic role in providing for the public safety of its citizens.

For example, this Court has already recognized that Cleveland’s assault weapons ban is a proper and reasonable exercise of Cleveland’s local police power and held that the ordinance is

⁵ At the time of Justice O’Connor’s recognition in this regard, Ohio’s concealed carry laws were already in existence. There was no comprehensive scheme of firearm regulation before or after Sub.H.B. No. 347.

enforceable. See *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, syllabus (“* * * Cleveland Ordinance prohibiting the possession and sale of ‘assault weapons’ in the City of Cleveland, is a proper exercise of the police power under Section 3, Article XVIII of the Ohio Constitution and does not violate Section 4, Article [the right to bear arms provision].”). Now, despite the fact that the General Assembly has not enacted any conflicting assault weapons legislation since *Arnold*, the General Assembly nonetheless seeks to wholly invalidate Cleveland’s assault ban through enforcement of R.C. § 9.68. Similarly, the State has no directly comparable statute to Cleveland’s local ordinance that prohibits minors from possessing a firearm in Cleveland, including handguns, and that subjects a minor to misdemeanor criminal penalties. See C.C.O. § 627.08.⁶ And the General Assembly does not regulate the open carry of firearms in urban public settings, unlike Cleveland and other municipalities throughout the state. Because the State has utterly failed to regulate these significant areas in the field of firearms, among many others, the applicable local ordinances do not conflict with general laws.

Accordingly, allowing R.C. § 9.68 to invalidate all local ordinances on mere preemption grounds—ordinances that were enacted to fill in the many gaps in Ohio’s firearm scheme and

⁶ As for any anticipated claim by the State that R.C. § 2923.18 is a comparable corresponding state law to Cleveland’s ordinance, this argument lacks merit. Revised Code § 2923.18, titled “License or permit to possess dangerous ordnance,” is limited to the possession of dangerous ordnances and sets forth the requirements for persons over the age of twenty-one to obtain a license to possess a dangerous ordnance. The statute does not even address the possession of semi-automatic firearms or handguns, let alone a minor’s possession of these firearms. Accordingly, even under R.C. § 2923.18, it would presumptively appear that a minor could openly carry a handgun or semi-automatic weapon through the streets of Cleveland and not violate any state firearm statute. Similarly, R.C. § 2923.211, which prohibits an individual under the age of 21 from purchasing a firearm, does not prohibit a minor’s possession of a firearm. Again, this gap in the state’s firearms scheme reinforces why R.C. § 9.68 cannot stand: Municipalities should not be stripped of their local police power when the State has not regulated in their place.

where there is no corresponding state regulation—defies decades of home rule precedent and jeopardizes the welfare and safety of communities throughout the state.

2. This Court's decision in *Baskin* does not stand for the proposition that Ohio has a statewide and comprehensive scheme of legislation in the entire field of firearms.

Cleveland believes the State will erroneously argue that this Court determined in *Baskin* that Ohio has a comprehensive legislative scheme concerning all firearm laws. Nowhere in the *Baskin* decision, however, did this Court make such a finding. See *Baskin*, 2006-Ohio-6422. The State's only support for its erroneous inference is this Court's determination that R.C. § 2923.17(A), a law that prohibits the acquisition, possession, carry, or use of any semi-automatic firearm designed or specifically adapted to fire more than thirty-one cartridges without reloading, is a general law. Beyond Justice O'Connor's recognition otherwise in her concurring opinion, there are many flaws with the State's reasoning and purported logic in attempting to bootstrap such result from the *Baskin* decision.

First, the mere fact that this Court found that R.C. § 2923.17(A) satisfied the *Canton* test, including the fact that it is part of a statewide and comprehensive scheme, is not the same as finding that Ohio has a comprehensive scheme that fills the entire field of firearm regulation as attempted by R.C. § 9.68. In determining whether a statute is part of a comprehensive scheme, this Court has consistently looked at what the statute is regulating: If the statute sets forth specific conduct that applies to citizens generally and is not simply limiting the power of municipalities, then a single law may be sufficient to satisfy the comprehensive scheme requirement. Conversely, if a statute operates to limit all local regulation in a field, such as R.C. § 1.63 (limiting provision at issue in *AFSA*) or R.C. § 9.68 (forecloses all local regulation in the field of firearms), then this Court's inquiry is much greater. See *AFSA*, *supra*. Indeed, this Court

has repeatedly recognized that the State cannot strip municipalities of their home rule powers without regulating in their place. See *W. Jefferson v. Robinson* (1965), 1 Ohio St.2d 113, 118 (striking state laws as not being “general laws” because they prohibited municipalities from requiring licenses to sell the uninvited solicitation of orders but did not actually regulate this topic in the municipalities’ place).

Second, the State fails to recognize that the comprehensive scheme must correlate with what the law is governing. In *Baskin*, the statute at issue did not seek to eliminate all local regulation in the entire field of firearms; therefore, this Court did not address the comprehensive scheme in the entire field of firearms. Rather, R.C. § 2923.17 addressed the specific issue of conduct involving the acquisition, possession, carry, or use of any semi-automatic firearm designed or specifically adapted to fire more than thirty-one cartridges without reloading. In *Baskin*, unlike R.C. § 9.68, the statute at issue contained a comprehensive scheme as to what it is specifically regulating: a proscription against acquiring, possessing, carrying, or using any semi-automatic firearm designed or specifically adapted to fire more than thirty-one cartridges without reloading.

Notably, Cleveland’s constitutional challenge of R.C. § 9.68, along with its specific claim that Ohio does not have a statewide and comprehensive scheme of firearm regulations, is limited to R.C. § 9.68 alone. Cleveland does not claim that all Ohio firearm-related laws are invalid because there is no statewide and comprehensive scheme. To the contrary, the issue lies where the State has not regulated specific conduct but yet still seeks to foreclose municipalities from enforcing their local ordinances in these areas. Finally, the mere fact that the General Assembly has enacted a statewide and comprehensive legislative scheme in some subfields of firearm

regulation is insufficient when the State seeks under R.C. § 9.68 to occupy every subfield of firearms.

B. Applying the requisite *Canton* test, R.C. § 9.68 is unconstitutional because it is not a general law and merely purports to limit municipalities' local police powers in the field of firearms.

This Court distinguishes between general laws of the state and laws enacted for the sole purpose of preventing local regulation of the subject matter. *West Jefferson*, 1 Ohio St.2d at 118. A state statute that purports only to limit a municipality's local police powers is not a general law and will be struck down as unconstitutional in violation of the Home Rule Amendment. *Id.*; see also *Linddale v. State* (1999), 85 Ohio St.3d 52, 53 ("If [the legislation at issue] is not a law applying to citizens generally, but an attempt to limit the powers of a municipal corporation to adopt or to enforce police regulations, it must be struck down as unconstitutional.").

In the seminal case *Canton v. State*, this Court developed a four-part test to determine whether a statute is a general law. Under the *Canton* test, a statute is a general law if it:

- (1) is part of a statewide and comprehensive legislative enactment; and
- (2) applies to all parts of the state alike and operates uniformly throughout the state; and
- (3) sets forth police, sanitary, or similar regulations, rather than granting or limiting municipal legislative power; and
- (4) prescribes a rule conduct upon citizens generally.

Canton, 95 Ohio St.3d. 149, 2002-Ohio-2005, ¶21.

If a statute does not meet all of these conditions, it is not a general law. *Id.*

Here, apart from applying uniformly throughout the state, R.C. § 9.68 meets none of the other requirements and therefore must be struck down as unconstitutional.

1. Revised Code § 9.68 is not part of a statewide and comprehensive legislative enactment.

As discussed above, Ohio does not have a statewide and comprehensive scheme in the entire field of firearms and “has barely touched upon the subject of firearm possession, use, transfer, and ownership.” *Baskin*, 2006-Ohio-6422, ¶¶ 52-53 (concurring opinion by Justice O’Connor). To the extent that the General Assembly seeks to rely on federal laws to rescue it from its failure to comprehensively regulate, the *Canton* Court makes clear that the State cannot rely on federal regulations to serve as its comprehensive regulatory scheme when the federal government has not expressly preempted the field. *Canton*, supra at ¶ 24. See also *Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 285 (E.D.N.Y. 1995), aff’d, 97 F.3d 681 (2nd Cir. 1996) (recognizing that congressional regulation of firearms does not create a scheme so pervasive that it leaves no room for state and local law).

In enacting R.C. § 9.68, the General Assembly has not, therefore, supplemented already existing comprehensive legislation nor has the State provided comprehensive legislation with respect to firearm ownership, general possession, purchase, sale, transfer, transportation, storage or keeping. Compare e.g. *AFSA*, 2006-Ohio-6043 (the predatory lending law at issue was enacted along with several other statutes aimed at regulating consumer mortgage lending); *Clermont Environmental Reclamation Co. v. Wiederhold* (1982), 2 Ohio St.3d 44 (the statute at issue involved the adoption of a comprehensive statutory scheme to regulate statewide control of the disposal of hazardous wastes); *Ohio Assn. of Private Detective Agencies* (1992), 65 Ohio St.3d 242 (the subject statute imposed statewide regulation of private detectives by way of a

comprehensive statewide licensure plan for detectives).⁷ As discussed above, R.C. § 9.68 actually attempts to eliminate the bulk of long-standing local regulations governing matters of public safety that municipalities have enacted to fill in the “gaps” in Ohio’s non-comprehensive legislative scheme. Any argument that R.C. § 9.68 relates solely to concealed carry laws must be rejected. Clearly, R.C. § 9.68 seeks to foreclose local regulation in the entire field of firearms—not just concealed carry. See R.C. § 9.68(A).

The State’s scheme of firearms regulations, including R.C. § 9.68, can be compared to the legislation at issue in *Canton*, supra, which this Court found unconstitutional. *Canton*, supra at ¶¶ 22-24. In *Canton*, this Court struck down R.C. § 3781.184, a statute barring local governments from prohibiting the location of certain manufactured homes in zoning areas where single-family homes were permitted. *Id.* at ¶ 2. Similar to the enactment of R.C. § 9.68 in Sub.H.B. 347, R.C. § 3781.184 was enacted as part of a bill that dealt with other topics and not the actual topic addressed in the newly enacted legislation. *Id.* at ¶ 2.

In applying the first prong of the general law test, this Court found that the statute was not part of a statewide and comprehensive zoning plan. *Id.* at ¶¶ 23-24. This Court reasoned that the law was part of a chapter varying widely in topic, and utterly lacking in the area of zoning plans. *Id.* at ¶ 23. This Court further noted that the law was enacted as part of a bill dealing with tax consequences for manufactured home and other topics, but not part of a statewide comprehensive legislative enactment regarding zoning. *Id.* Finally, this Court found that the State did not already have a statewide zoning scheme, or a comprehensive plan or scheme for the licensing, regulation, or registration of manufactured homes, and to the extent that the State

⁷ In these cases, unlike here, the legislation either enacted several comprehensive statutes specifically tailored to regulating the subject matter at issue or supplemented already existing legislation in the field.

relied on federal laws to provide such a scheme, federal law did not preempt the area and could not serve as the state's comprehensive scheme. *Id.* at ¶ 24.

Similar to the random and varied characteristics of the Revised Code chapter housing the unconstitutional statute in *Canton*, albeit a necessary placement because no comprehensive legislative scheme existed, R.C. § 9.68 is found in the "Miscellaneous" chapter of the Revised Code wedged between R.C. § 9.67 "Restrictions on relocation of professional sports team" and R.C. § 9.70 "Permission for way over lands of public institution." Likewise, R.C. § 9.68 was enacted as part of Sub. H.B. No. 347 – a bill dealing only with Ohio concealed carry laws and nothing related to firearm ownership, general possession, purchase, sale, transfer, transportation, storage or keeping or firearm parts, its components, or its ammunition. Moreover, as recognized by the *Canton* Court, because the federal government has not expressly preempted the field of firearms, the State cannot rely on federal regulations to serve as its comprehensive regulatory scheme. *Id.*

In light of the State's failure to enact a comprehensive regulatory scheme in the field of firearms, either through R.C. § 9.68 or previous legislation, R.C. § 9.68 is nothing more than an attempt to limit municipalities' local police powers. See *Limdale v. State* (1999), 85 Ohio St.3d 52 (striking law because the statute was not part of a system of uniform statewide regulation and the statute merely operated to prohibit certain municipalities from exercising their police powers). Accordingly, R.C. § 9.68 is not a general law and must be struck down.

2. Revised Code § 9.68 does not set forth any specific regulations.

Under the third prong of the *Canton* test, a general law must set forth police, sanitary or similar regulations rather than simply granting or limiting legislative power. The *Canton* Court explained that under this part of the test, a statute prohibiting the exercise of home rule powers

must serve an overriding state interest. *Id.* at ¶ 32, citing *Clermont*, *supra* at 48. If a statute does not serve its purported purpose, then the Court will strike it as an unlawful attempt to limit a municipality's home rule powers.

The *Canton* Court found that R.C. § 3781.184 failed this prong because, despite the State's claim that the goal of the statute is to foster more affordable housing, an exception in the statute, which operated to allow developers to use deed restrictions to prohibit the placement of manufactured homes, frustrated the purported purpose. *Id.* Here, R.C. § 9.68 is remarkably similar to this same deficiency.

The General Assembly claims that R.C. § 9.68 serves the statewide interest of providing "uniform laws" in the field of firearms. The State's purported rational of excluding municipal authority and recognizing state and federal regulatory alone is to avoid a confusing "patchwork" of regulations in the field of firearms. But if the State truly desired "uniform laws" in the field of firearms, it could have enacted such laws. Instead of enacting any comprehensive and uniform statutory scheme regulating firearms as part of R.C. § 9.68, it opted to do nothing more than purport to nullify municipalities' regulations and prevent them from exercising any local police power. Moreover, because R.C. § 9.68 does not govern the use of firearms, municipalities can enact and enforce differing firearm regulations related to use; therefore, uniform firearm laws will not exist even under R.C. § 9.68.

Additionally, as recognized by this Court in *W. Jefferson*, a law that purports only to grant and limit legislative power of municipalities without regulating any conduct is not a general law. *W. Jefferson*, 1 Ohio St.2d at 118. Here, the express language of R.C. § 9.68 reveals that the statute does not set forth specific regulations with regard to firearm control. Rather, R.C. § 9.68 states that federal and state law shall solely govern in the field of firearms—

this clearly operates to limit a municipality's local home rule powers. Likewise, the General Assembly's inclusion of a provision providing for the mandatory award of attorney fees for individuals prevailing in a challenge of local ordinances further exemplifies the State's intent to limit municipal police enforcement.

Accordingly, because R.C. § 9.68 sets forth no specific regulations but merely recognizes existing state law while operating to extinguish municipalities' constitutional local police powers in the field of firearms, R.C. § 9.68 does not serve its purported purpose and is not a general law.

3. Revised Code § 9.68 fails to prescribe a rule of conduct upon citizens generally.

The Ohio Supreme Court has repeatedly recognized that a statute like this, that merely limits municipalities' legislative authority, fails to prescribe a rule of conduct upon citizens generally "because * * * the statute applies to municipal legislative bodies, not to citizens generally." *Canton*, supra at ¶ 36, citing *Limdale v. State* (1999), 85 Ohio St.3d 52 and *Youngstown v. Evans* (1929), 121 Ohio. St. 342, 345 (striking state law that limited municipalities' ability to impose a greater penalty for liquor offense because the law failed to prescribe a rule of conduct and only limited municipalities' law making ability). See also *Dublin v. State*, 118 Ohio Misc.2d 18, 2002-Ohio-2431, ¶¶ 291-316 (examining at depth the general law analysis and concluding that a law regulating a municipal government as opposed to a citizen generally is not a general law even when law "uses the language of rights rather than using more direct language prohibiting the exercise of constitutionally granted municipal police powers").

It is evident on the face of the statute that R.C. § 9.68 does not prescribe a rule of conduct upon citizens generally. The statute establishes no standard of conduct for citizens to follow. Rather, it simply expresses that the lawfulness of a citizen's conduct with respect to the

ownership, possession, purchase, sale, transfer, transport, storage, or keeping of any firearm will no longer be determined under municipal law but solely determined under federal or state law.

In *Linndale* and *Evans*, the Ohio Supreme Court struck down statutes very similar to R.C. § 9.68 because, among other things, they prescribed conduct on municipalities and not citizens generally. The *Linndale* case dealt with R.C. § 4549.17, a law that barred municipalities from issuing speeding and excess weight citations on interstate freeways when the locality had less than 800 yards of the freeway within its jurisdiction, its officers had to travel outside their jurisdiction to enter onto freeway, and its officers were entering the freeway with the primary purpose of issuing citations. *Linndale*, supra at 52. Similarly, in *Evans*, the Court struck down a state law that limited municipalities' ability to impose a greater penalty for a liquor offense because the law failed to prescribe a rule of conduct and only limited municipalities' law making ability. *Evans*, supra at 345.

Thus, applying these cases, this Court should find that R.C. § 9.68 fails to prescribe a rule of conduct upon citizens generally because it establishes no positive regulation. Instead, R.C. § 9.68 merely unconstitutionally limits municipal legislative authority in the field of firearms. As a result, R.C. § 9.68 fails to satisfy the requirements of a general law and should be declared unconstitutional.

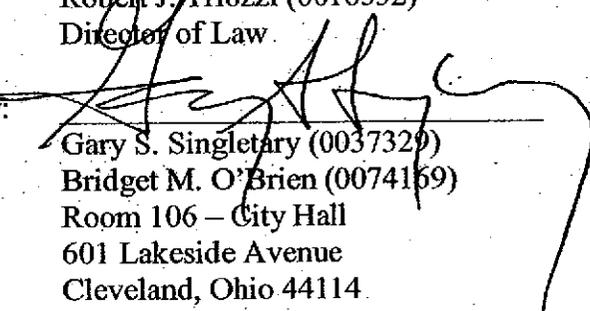
IV. CONCLUSION

Revised Code § 9.68 directly contravenes the Home Rule Amendment as it seeks to preclude municipalities from exercising any local police power related to firearms even in the absence of a conflict with a general state law. While the statute strips municipalities of their right to protect their citizens and enact reasonable regulations in the field of firearms, it fails to regulate in their place. Revised Code § 9.68 constitutes an improper attempt to preempt Clyde,

and all other municipalities, from exercising their home rule powers and will continue to confuse lower courts unless declared unconstitutional. Moreover, because R.C. § 9.68 is unconstitutional, the Sixth District improperly relied on the statute and erroneously abandoned its earlier general law analysis. Accordingly, Cleveland urges this court to reverse the lower court's decision and hold that R.C. § 9.68 cannot be the basis for preempting Clyde's firearm ordinance or any other municipal ordinance.

Respectfully submitted,

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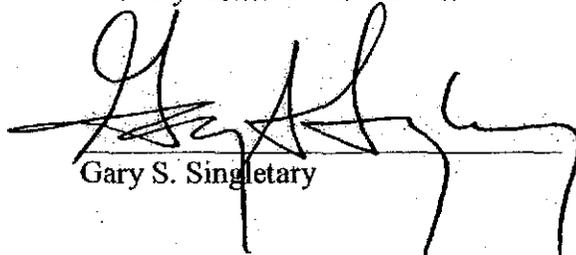
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APPENDIX

CLEVELAND CODIFIED ORDINANCE

628.03 Unlawful Conduct

(a) No person shall sell, offer or display for sale, give, lend or transfer ownership of, acquire or possess any assault weapon.

(b) This section shall not apply to any officer, agent, or employee of this or any other state or the United States, members of the armed forces of the United States or the organized militia of this or any other state, and law enforcement officers as defined in division (k) of Section 601.01, to the extent that any such person is authorized to acquire or possess an assault weapon and is acting within the scope of his duties. Further, this section shall not apply to the transportation of firearms through the City of Cleveland in accordance with federal law.

(Ord. No. 2661-91. Passed 11-18-91, eff. 11-20-91)

CLEVELAND CODIFIED ORDINANCE

627.08 Possession of Firearms by Minors

(a) No minor shall purchase, own, possess, receive, have on or about his person or use any firearm except pursuant to Section 627.07(a)(3).

(b) A juvenile who violates this section shall be adjudged an unruly child, with such disposition of the case as may be appropriate under RC Chapter 2151.
(Ord. No. 483-75. Passed 6-9-75, eff. 6-9-75)

CLEVELAND CODIFIED ORDINANCE

627.09 Possessing Deadly Weapons on Public Property

(a) No person shall knowingly have in his possession or ready at hand any deadly weapon while on public property or in a public building.

(b) For the purpose of this section, public property and public buildings shall include, but not be limited to parks, playgrounds, beaches, marinas, courthouses, auditoriums, stadiums, office buildings, jails, storage areas and yards, greenhouses, plants and works and any other property, building or structure owned, leased or rented by a governmental unit, to schools, colleges, and other learning institutions, whether public, private or parochial, and to churches, synagogues and other places of worship.

(c) This section does not apply to officers, agents or employees of this or any other state or the United States, to law enforcement officers authorized to carry or possess deadly weapons or to persons with private or special police commissions, and acting within the scope of their duties, or if the deadly weapon was part of a public weapons display, show or exhibition or was in the possession of a person participating in an organized match, competition or practice session on public property, or in a public building.

(d) Notwithstanding the provisions of Sections 601.13 and 601.99(a), whoever violates this section is guilty of possessing deadly weapons on public property, and shall be fined not less than three hundred dollars (\$300.00), nor more than one thousand dollars (\$1,000), and imprisoned for not less than three days, nor more than six months. No part of this sentence shall, in any case whatsoever, be suspended or otherwise reduced.

(Ord. No. 483-75. Passed 6-9-75, eff. 6-9-75)

CLEVELAND CODIFIED ORDINANCE

627.10 Possessing Certain Weapons at or About Public Places

(a) No person shall knowingly carry, have in his possession or ready at hand any handgun, BB gun, pellet gun, dangerous ordnance, shotgun, rifle, knife having a blade two and one-half inches in length or longer, brass knuckles, cestus, billy, karate stick, blackjack, sword or saber while at or about a public place.

(b) As used in this section, "public place" means any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It also includes the front or immediate area of any store, shop, restaurant, tavern or other place of business and any grounds, areas or parks where persons would congregate.

(c) This section does not apply to officers, agents or employees of this or any other state or the United States, to law enforcement officers authorized to carry or possess deadly weapons or to persons with private or special police commissions, and acting within the scope of their duties.

(d) This section shall not apply if any weapon in division (a) of this section was part of a public weapon display, show or exhibition, or was in the possession of a person participating in an organized match, competition or practice session.

(e) It is an affirmative defense to a charge under this section that the actor was not otherwise prohibited by law from possessing the weapon, and that the weapon was kept ready at hand by the actor for defense purposes, while he was engaged in his lawful business or occupation, which business or occupation was of such character or at such a place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent man in having the weapon ready at hand.

(f) It is an affirmative defense to a charge under this section that the actor was not otherwise prohibited by law from possessing a knife having a blade two and one-half inches in length or longer, and that either (i) the actor at the time was engaged in a lawful business or pursuit and that business or pursuit requires a knife having a blade two and one-half inches in length or longer as a tool of trade or pursuit, or (ii) the knife having a blade two and one-half inches in length or longer was kept ready at hand by the actor for defense purposes, while he was engaged in his lawful business or occupation, which business or occupation was of such character or at such a place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent man in having such a knife ready at hand.

(g) Notwithstanding the provisions of Section 601.13 and division (a) of Section 601.99, whoever violates this section is guilty of possessing certain weapons on or about public places and shall be fined not less than three hundred dollars (\$300.00), nor more than one thousand dollars (\$1,000), and imprisoned for not less than three (3) days, nor more than six (6) months. No part of this sentence shall, in any case whatsoever, be suspended or otherwise reduced.
(Ord. No. 1361-01. Passed 8-15-01)

CLEVELAND CODIFIED ORDINANCE

674.05 Registration of Handguns; Application; Fee

(a) Application for a handgun registration card shall be made in writing by the person claiming to be the owner of the handgun to be registered at any office where identification cards may be issued under Section 674.04. The application shall be accompanied by an application fee of two dollars (\$2.00) for each handgun to be registered, which shall be paid into the Treasury of the City, with separate accounting made for it. When satisfied that the applicant holds a valid identification card and is not in that class of persons prohibited from holding the same, a registration card shall be issued to the applicant no sooner than three (3) days and no more than sixty (60) days after the date of application.

(b) All registration cards issued under this section shall be entitled "City of Cleveland, Ohio, Handgun Registration Card;" be serially numbered according to a system devised by the Chief of Police; bear date of issue, the name of the Chief of Police, the applicant's name, home address, identification card number, the signature of the applicant; and contain the name, type, caliber, and serial number of the handgun. A copy of each registration card shall be retained by the Chief, together with a copy of the application, which documents shall be maintained on permanent file by the Chief and shall not be deemed a public record nor be disclosed to unauthorized persons.

(c) Any person who sells or otherwise transfers possession of a registered handgun shall, within five days of the date of transfer of possession of the handgun, surrender the registration card for the handgun with the name, address, or social security number, and identification card number, if required by law, of the buyer endorsed on it, to any office where identification cards are issued, and obtain a receipt for it. The office receiving the same shall immediately cancel the registration card.

(Ord. No. 2393-02. Passed 2-3-03, eff. 2-3-03)