

IN THE SUPREME COURT OF OHIO
NO. 2007-0960

CITY OF CLYDE, <i>et al.</i> ,)	
)	
Appellants,)	On Appeal from the
)	Sandusky County Court of
)	Appeals, Sixth Appellate
)	District
v.)	
)	Court of Appeals Case
OHIOANS FOR CONCEALED CARRY, INC., <i>et al.</i>)	Nos. S-06-039, S-06-040
Appellees)	

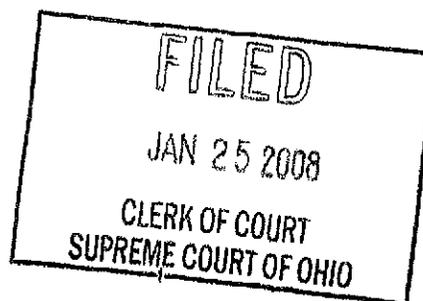
BRIEF OF AMICUS CURIAE NATIONAL RIFLE ASSOCIATION
OF AMERICA, INC., IN SUPPORT OF APPELLEES

JOHN F. KOSTYO (# 0019389) (COUNSEL OF RECORD)
1100 E. Main Street
Suite 200, North Entrance
Findlay, Ohio 45840
(419) 422-7700
Fax (419) 425-0042
jfk@KostyoLaw.com

STEPHEN P. HALBROOK (*Pro Hac Vice*)
10560 Main Street, Suite 404
Fairfax, Virginia 22030
(703) 352-7276
Fax (703) 359-0938
protell@aol.com

COUNSEL FOR AMICUS CURIAE NATIONAL RIFLE ASSOCIATION OF AMERICA,
INC.

JOHN C. MCDONALD #0012190
STEPHEN J. SMITH #0001344
MATTHEW T. GREEN #0075408
Schottenstein, Zox & Dunn Co., L.P.A.
250 West Street



mgreen@szd.com

BARRY W. BOVA #0041047
817 Kilbourne Street, P.O. Box 448
Bellvue, Ohio 44811
(419) 483-7119
Fax: (419) 483-7224
bbova@clydeohio.org

COUNSEL FOR APPELLANTS THE CITY OF CLYDE, et al.

DANIEL T. ELLIS #0038555
Lydy & Moan
4930 Holland Sylvania Road
Sylvania, Ohio 43560
(419) 882-7100
Fax No. (419) 882-7201
dellis@lydymoan.com

L. KENNETH HANSON, III #0064978
Firestone, Brehm, Hanson, Wolf, Young, LLP
15 West Winter Street
Delaware, OH 43015
(715) 363-1213
Fax No. (740) 369-0875

COUNSEL FOR APPELLEES OHIOANS FOR CONCEALED CARRY, INC. et al.

MARC DANN # 0039425
Attorney General
WILLIAM P. MARSHALL #0038077
Solicitor General
ELISE PORTER #0055548
Deputy Solicitor
FRANK M. STRIGARI #0078377
Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980
Fax No. (614) 466-5087
wmarshall@ag.state.oh.us

COUNSEL FOR INTERVENOR-APPELLEE OHIO ATTORNEY GENERAL MARC DANN

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF INTEREST OF AMICUS CURIAE	1
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT	2
I. AMICUS’ PROPOSITION OF LAW NO. 1: R.C. 9.68 AND 2923.126 ARE GENERAL LAWS UNDER OHIO’S HOME RULE AMENDMENT	2
II. AMICUS’ PROPOSITION OF LAW NO. 2: IN ENFORCING THE RIGHT TO BEAR ARMS FOR DEFENSE AND SECURITY, THE GENERAL ASSEMBLY MAY DISPLACE A MUNICIPALITY’S ABILITY TO REGULATE	13
III. AMICUS’ PROPOSITION OF LAW NO. 3: ORDINANCES ADVERSE TO LICENSED CARRY UNDER STATE LAW HAVE UNCONSTITUTIONAL EXTRATERRITORIAL EFFECTS	19
CONCLUSION	23
APPENDIX	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

	<u>Page</u>
<i>Allstate Fire Ins. Co. v. Singler</i> (1968), 14 Ohio St. 2d 27, 236 N.E.2d 79	6
<i>Arnold v. Cleveland</i> (1993), 67 Ohio St.3d 35	13
<i>Blackman v. City of Cincinnati</i> (1941), 66 Ohio App. 495, 35 N.E.2d 164, <i>aff'd.</i> , (1942), 140 Ohio St. 25, 42 N.E.2d 158,	10, 11
<i>Canton v. State</i> (2002), 95 Ohio St. 3d 149, 766 N.E.2d 963	3
<i>Cincinnati v. Baskin</i> (2006), 112 Ohio St. 3d 279, 859 N.E.2d 514	10
<i>City of Chicago v. Haworth</i> (1999), 303 Ill. App. 3d 451, 708 N.E.2d 425, 236 Ill.Dec. 839	19
<i>City of Portland v. Lodi</i> (1989), 94 Or. App. 735, 767 P.2d 108	17
<i>City of Toledo v. Beatty</i> (2006), 169 Ohio App.3d 502, 863 N.E.2d 1051	3
<i>Doe v. City & County of San Francisco</i> (1982), 136 Cal. App. 3d 509, 186 Cal. Rptr. 380	18
<i>Doe v. Portland Housing Authority</i> (Me. 1995), 656 A.2d 1200	17
<i>Dwyer v. Farrell</i> (1984), 193 Conn. 7, 475 A.2d 257	19
<i>Fiscal v. City & County of San Francisco</i> (Cal. App. 1 Dist. 2008), 2008 WL 81550	18
<i>Gladon v. Greater Cleveland Regional Transit Auth.</i> (1996), 75 Ohio St. 3d 312, 662 N.E.2d 287	6
<i>Grayned v. City of Rockford</i> (1972), 408 U.S. 104	22
<i>Greenhills Home Owners Corp. v. Village of Greenhills</i> (1966), 5 Ohio St.2d 207, 215 N.E.2d 403	21
<i>Hall China Co. v. Public Utilities Commission</i> (1977), 50 Ohio St.2d 206, 364 N.E.2d 852	21
<i>HC Gun & Knife Shows, Inc. v. City of Houston</i> (5th Cir. 2000), 201 F.3d 544	19

<i>Holiday Homes, Inc. v. Butler Cty. Bd. of Zoning Appeals</i> (1987), 35 Ohio App. 3d 161, 520 N.E.2d 605	16
<i>In re Reilly</i> (Ohio Com. Pl. 1919), 31 Ohio Dec. 364, 1919 WL 1022	14
<i>Jones v. United States</i> (1999), 526 U.S. 227	21
<i>Klein v. Leis</i> (2003), 99 Ohio St. 3d 537, 795 N.E.2d 633	7, 11, 12, 15, 16
<i>Michigan Coalition for Responsible Gun Owners v. City of Ferndale</i> (2003), 256 Mich. App. 401, 662 N.W.2d 864	18
<i>Montgomery County v. Maryland</i> (1985), 302 Md. 540, 489 A.2d 1114	19
<i>Morial v. Smith & Wesson Corp.</i> (La. 2001), 785 So. 2d 1	8
<i>NRA v. City of South Miami</i> (Fla. 3d DCA 2002), 812 So. 2d 504	19
<i>Northeast Ohio Regional Sewer Dist. v. Brooklyn</i> (1989), 64 Ohio App. 3d 57, 580 N.E.2d 796	10
<i>Norwood v. Horney</i> (2006), 110 Ohio St. 3d 353, 853 N.E.2d 1115	8
<i>Ohioans for Concealed Carry, Inc. v. Clyde</i> (Ohio App. 2007), 2007 WL 1098347	3
<i>Ortiz v. Commonwealth</i> (1996), 545 Pa. 279, 681 A.2d 152	17
<i>Peoples Rights Organization, Inc. v. City of Columbus</i> (6th Cir. 1998), 152 F.3d 522	13, 22
<i>Robertson v. Baldwin</i> (1897), 165 U.S. 275	14
<i>Saenz v. Roe</i> , 526 U.S. 489 (1999)	22
<i>Schwanda v. Bonney</i> (Me. 1980), 418 A.2d 163	17
<i>Screws v. United States</i> (1945), 325 U.S. 91	22
<i>Springfield Armory, Inc. v. City of Columbus</i> (6th Cir. 1994), 29 F.3d 250	13
<i>State ex rel. Hayes v. Davies</i> (Ohio Cir. Ct. 1905), 17 Ohio C.D. 601, 1905 WL 1140	11
<i>State v. Newell</i> (1994), 93 Ohio App. 3d 609, 639 N.E.2d 513	6

<i>State v. Shelton</i> (1989), 63 Ohio App. 3d 137, 578 N.E.2d 473	7
<i>State v. Ulrich</i> (1984), 17 Ohio App. 3d 182, 478 N.E.2d 812	13
<i>Ullmann v. United States</i> (1956), 350 U.S. 422	15
<i>United States v. Lopez</i> (1995), 514 U.S. 549	23
<i>United States v. Strakoff</i> (5th Cir. 1983), 719 F.2d 1307	8
<i>Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.</i> (1982), 454 U.S. 464	15
<i>Williams v. Mayor & City Council of Baltimore</i> (1933), 289 U.S. 36	8

CONSTITUTIONS

U.S. Const., Amendment XIV	8, 22
U.S. Const., Art. I, § 8	23
U.S. Const., Art. IV, § 2	22
La. Const. art. I	8
Ohio Const., Art. I, § 1	8, 14
Ohio Const., Art. I, § 3	15
Ohio Const., Art. I, § 4	15
Ohio Const., Art. I, § 14	15
Ohio Const., Art. I, § 20	15
Ohio Const., Art. II, § 1	15
Ohio Const., Art. VIII	14, 15
Ohio Const., Art. VIII, § 3	15
Ohio Const., Art. VIII, § 20	14

Ohio Const., Article XVIII, § 3 3, 15, 21, 23

STATUTES

18 U.S.C. § 922(t) 12
18 U.S.C. § 922(v) 13
18 U.S.C. § 923 12
18 U.S.C. § 930(a) 8
18 U.S.C. § 930(e) 8
18 U.S.C. § 930(h) 8
26 U.S.C. § 5841 12

CODES AND ORDINANCES

General Code § 12857 11
R.C. § 9.68 *passim*
R.C. § 9.68(A) 13, 16
R.C. § 109.69 22
R.C. § 109.69(A)(1) 20
R.C. § 2911.21(A) 6
R.C. § 2921.23 11
R.C. § 2923.17(A) 9, 10
R.C. § 2923.17(C) 10
R.C. § 2923.18 12
R.C. § 2923.18(D) 10

R.C. § 2923.125	4, 20
R.C. § 2923.126	<i>passim</i>
R.C. § 2923.126(A)	3, 4
R.C. § 2923.126(B)	4
R.C. § 2923.126(C)	3
R.C. § 2923.126(C)(3)	5
R.C. § 2923.126(D)	9
R.C. § 2923.126(E)	9
R.C. § 2923.126(F)	9
R.C. § 2923.1213	4
Clyde Codified Ordinance 2004-41	2, 13, 22

OTHER AUTHORITIES

Blackstone, <i>Commentaries</i>	5, 11
S. Halbrook, <i>Firearms Law Deskbook, 2008 Ed.: Federal and State Criminal Practice</i> (Thomson-West 2007)	4
C. Koper, “An Updated Assessment of the Federal Assault Weapons Ban,” <i>Report to the National Institute of Justice, U.S. Dept. of Justice</i> (June 2004)	13
Suetonius, <i>Lives of the Twelve Caesars</i>	22

INTRODUCTION

This case concerns whether the General Assembly may enact a general criminal law establishing uniform, State-wide rules and exceptions to make it possible for law-abiding citizens to exercise their constitutional right to bear arms for defense and security, or whether localities may enact a patchwork of potentially hundreds of additional restrictions which chill exercise of this constitutional right and subjects citizens to arrest and prosecution for bearing arms for defense and security.

STATEMENT OF INTEREST OF AMICI CURIAE

The National Rifle Association of America, Inc. (“NRA”) is a New York not-for-profit membership corporation founded in 1871. NRA has roughly 4 million individual members and 10,700 affiliated members (clubs and associations) nationwide. Its purposes and objectives, as set forth in its Bylaws, are:

1. To protect and defend the Constitution of the United States, especially with reference to the inalienable right of the individual American citizen guaranteed by such Constitution to acquire, possess, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people may always be in a position to exercise their legitimate individual rights of self-preservation and defense of family, person, and property, as well as to serve effectively in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens;
2. To promote public safety, law and order, and the national defense;
3. To train members of law enforcement agencies, the armed forces, the militia, and people of good repute in marksmanship and in the safe handling and efficient use of small arms;
4. To foster and promote the shooting sports, including the advancement of amateur competitions in marksmanship at the local, state, regional, national, and international levels;
5. To promote hunter safety, and to promote and defend hunting as a

shooting sport and as a viable and necessary method of fostering the propagation, growth and conservation, and wise use of our renewable wildlife resources.

The NRA has a strong interest in upholding the rights of its members and all law-abiding citizens to keep and bear arms as protected in the constitutions of each state, including Ohio, and in ensuring the right to notice and due process of law regarding the carrying and possession of firearms. The NRA regularly litigates and files *amicus curiae* briefs in matters related to the right to keep and bear arms as guaranteed in the state and federal constitutions. This brief seeks to assist the Court by providing textual analysis and comparative law not set forth in the briefs of the parties and the other *amici*.

In addition to representing the interests of its Ohio members, the NRA has numerous members nationwide who travel to and in Ohio and who are adversely affected by local ordinances which are inconsistent with uniform statewide standards in Ohio. Ohio law provides for reciprocity agreements with other states entered into by the attorney general under which licenses to carry concealed handguns are honored within such states. Inconsistent local ordinances in effect nullify such agreements and violate the rights of all such qualified persons.

STATEMENT OF THE CASE AND FACTS

The amicus adopts the statement of the case and facts set forth by Appellees Ohioans for Concealed Carry, Inc., et al., and Appellee Ohio Attorney General Marc Dann.

ARGUMENT

I. AMICUS' PROPOSITION OF LAW NO. 1: R.C. 9.68 AND 2923.126 ARE GENERAL LAWS UNDER OHIO'S HOME RULE AMENDMENT¹

¹This is a rewording of Appellant's proposition of law No. 1, which states: "R.C. 2923.126 is not a general law under Ohio's Home Rule Amendment."

Clyde Codified Ordinance 2004-41 prohibits persons from carrying a handgun within the confines of any City Park, regardless of whether a person has a license for a concealed handgun issued pursuant to state law. This conflicts with R.C. 9.68 and 2923.126. Section 9.68 states in part:

(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.* (Emphasis added.)

Quoting the above, the Court of Appeals held:

The emphasized language quoted *supra* indicates the Ohio Legislature's clear intent that the concealed carry laws have general and uniform operation throughout Ohio. Since, pursuant to R.C. 9.68, no law, other than the United States Constitution, Ohio Constitution, state law, or federal law, may interfere with the right to "keep and bear arms," local ordinances which further restrict the places in which a person may legally carry a concealed weapon are invalid. Therefore, Clyde Codified Ordinance 2004-41 is pre-empted by R.C. 9.68 and 2923.126

Ohioans for Concealed Carry, Inc. v. Clyde (Ohio App. 2007), 2007 WL 1098347, *2.

Ohio Const., Article XVIII § 3, provides: "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." Before the enactment of R.C. 9.68, the Court of Appeals held in *City of Toledo v. Beatty* (2006), 169 Ohio App.3d 502, 512, 863 N.E.2d 1051, that because "R.C. 2923.126(C) prohibits that which R.C. 2923.126(A) permits . . . R.C. 2923.126(A) does not have uniform application to all citizens of the state, and as such is not a general law." This was based on the exception to the general right of a licensee to carry

a concealed handgun on private property posted with a conspicuous notice prohibiting firearms.

Canton v. State (2002), 95 Ohio St.3d 149, 153, 766 N.E.2d 963, set forth the following test:

[T]o constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

Clyde concedes that the statutes at issue meet all of these criteria except for the uniformity requirement. Br. 7. “The requirement of uniform operation throughout the state of laws of a general nature does not forbid different treatment of various classes or types of citizens, but does prohibit nonuniform classification if such be arbitrary, unreasonable or capricious.” *Canton, id.* at 155 (citation omitted). However, there is nothing arbitrary about balancing the right of persons to bear arms for defense and security with the right of persons to decide the conditions for entry onto their private property.

At the outset, it is probable that all laws include exceptions, but they may still have uniform application to all citizens of the state and are general laws. Where the law and its exceptions apply uniformly to all citizens, the law remains general.

Like criminal laws in general, firearm laws include both prohibitions and exceptions which nonetheless have uniform application and are general laws. R.C. § 2923.126 is no different. R.C. § 2923.126(A) provides in part: “Except 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 if the licensee also carries a valid license and valid identification when the licensee is in actual possession of a concealed handgun.” Every other

State in the United States follows a similar pattern, allowing firearms to be carried in some places and not others.²

Section 2923.126(B) provides that a license does not authorize carrying a concealed handgun into (1) a police station, other designated law enforcement premises, or an airport passenger terminal, (2) a school safety zone, (3) a building in which a courthouse is located, (4) a place where liquor is dispensed under permit, (5) premises of institutions of higher education (except in a locked motor vehicle or being placed therein), (6) a place of worship (unless permitted), (7) designated day-care places (except by a resident in parts of the home not used for day care), (8) an aircraft in or intended for air transportation, (9) a building owned by the state or a political subdivision or leased by a governmental entity listed above, and (10) a place where prohibited by federal law.

In addition to the above commonplace exceptions familiar to the public at large, the following further and quite ordinary exception is provided by R.C. § 2923.126(C)(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.

The above expresses a mere truism that has always been recognized in the law of trespass. A person may post on his or her private property a sign prohibiting persons from carrying any object on the property or from entering the property at all. The right to allow or to exclude persons for any

²For a summary of the firearms laws of all fifty states, see Appendix A: State Firearms Laws, in Stephen P. Halbrook, *Firearms Law Deskbook, 2008 Ed.: Federal and State Criminal Practice* (Thomson-West 2007).

reason or for no reason reflects the general law of private property and has uniform application to all citizens of the state.³ A “no trespassing” sign forbids entry by any unauthorized person, a “no hunting” sign by hunters, and a “no soliciting” sign by solicitors. A “no firearms” sign is no different.

Exceptions to the law of trespass and the various conditions under which it does or does not apply do not destroy its status as a general law. A “no trespassing” sign may be disregarded by persons with written permission, meter readers, game wardens, and law enforcement personnel on official business. These exceptions are all encompassed in the concept of “privilege” set forth in the criminal trespass statute, R.C. § 2911.21(A):

No person, without privilege to do so, shall do any of the following:

- (1) Knowingly enter or remain on the land or premises of another;
- (2) Knowingly enter or remain on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes, or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard;
- (3) Recklessly enter or remain on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access;
- (4) Being on the land or premises of another, negligently fail or refuse to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either.

“In a criminal trespass charge, the state is required to prove lack of privilege.” *State v. Newell* (1994), 93 Ohio App.3d 609, 611, 639 N.E.2d 513. A trespasser is “one who unauthorizedly

³³ Blackstone, *Commentaries* *209, defined trespass in part as “an entry on another man’s ground without a lawful authority,” noting that “this right [of property] must be exclusive; that is, that the owner may retain to himself the sole use and occupation of his soil: every entry therefore thereon without the owner’s leave, and especially if contrary to his express order, is a trespass or transgression.” Ohio law reflects this common law tradition.

goes upon the private premises of another without invitation or inducement, express or implied, but purely for his own purposes or convenience, and where no mutuality of interest exists between the owner or occupant.” *Allstate Fire Ins. Co. v. Singler* (1968), 14 Ohio St.2d 27, 236 N.E.2d 79, 81. See *Gladon v. Greater Cleveland Regional Transit Auth.* (1996), 75 Ohio St.3d 312, 315, 662 N.E.2d 287 (“Ohio adheres to the common-law classifications of invitee, licensee, and trespasser”; a “visitor has the status of an invitee only while he is on the part of the land to which his invitation extends”). In short, the law of criminal trespass, despite the exception for “privilege,” is a general law.

The prohibition on a licensee carrying a concealed handgun on private property which is posted to prohibit such simply reflects traditional trespass law. *Klein v. Leis* (2003), 99 Ohio St.3d 537, 539, 795 N.E.2d 633, noted that “the right to bear arms is fundamental. . . . Yet, however fundamental and entrenched in the constitutional heritage of our state, the right to bear arms is not absolute.” “Most, perhaps all, of the rights we hold fundamental have limitations,” including “rights of assembly, free speech, free press, right to counsel, and right to trial by jury.” *Id.* Exercise of all of these rights too may be prohibited on private property, but that does not render the trespass law as applied to those subjects into the status of not being a general law.

Clyde argues that it is irrational that a private landowner may prohibit a firearm on her own property, but that a municipality may not. Br. 10. Not so. “As a general rule, a person has the right to enter and be upon the public areas of public property.” *State v. Shelton* (1989), 63 Ohio App.3d 137, 139-40, 578 N.E.2d 473. The concept of private property means that an owner may exclude persons wearing red hats and allow persons wearing green hats. It is not irrational that a municipality

may not exclude persons for such reasons.⁴ See also Brief of Amici Curiae Ohio Municipal League 7-8 (erroneously equating public and private property interests).

Contrary to Clyde, private persons, not municipalities, have a constitutional right to private property.⁵ A municipality holds public property in trust. Bills of rights protect private individuals against governmental entities and do not guarantee “rights” to governmental entities. Upholding a firearms preemption statute in a home-rule state against a municipal challenge, *Morial v. Smith & Wesson Corp.* (La. 2001), 785 So.2d 1, 13, held that “the City, as a political subdivision of the state rather than a ‘person,’ is without the protections of La. Const. art. I, the Declaration of Rights Article, or the Due Process and Equal Protection Clauses of the United States Constitution.” *Id.*, citing *Williams v. Mayor & City Council of Baltimore* (1933), 289 U.S. 36, 40 (municipalities are not entitled to Fourteenth Amendment protections). Only persons have a right against deprivation of property without due process.

The provision in R.C. § 2923.126(C)(3) that a property owner “may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms

⁴Contrary to Clyde, the private vs. public distinction is not arbitrary – all persons are entitled to use the public roads, but owners of private roads and driveways (such as at homes) are not open to the public, and private persons may restrict access. That does not mean that the traffic laws are not general law. Also, the public owns the public properties and thus there should be lenient rules for access. Thus, the golf course example fails to show arbitrariness, any more than would be the fact that one golf course may be for members only, another for the general public, and each may have different rules on different subjects. See Clyde Br. 10.

⁵“All men . . . have certain inalienable rights, among which are those of . . . acquiring, possessing, and protecting property.” Ohio Const., Art. I, § 1. “[T]he founders of our state expressly incorporated individual property rights into the Ohio Constitution in terms that reinforced the sacrosanct nature of the individual's ‘inalienable’ property rights, Section 1, Article I, which are to be held forever ‘inviolable.’ Section 19, Article I.” *Norwood v. Horney* (2006), 110 Ohio St.3d 353, 363, 853 N.E.2d 1115.

or concealed firearms” simply embodies the same principle requiring notice as is set forth in the criminal trespass statute, R.C. § 2911.21(A).⁶ Notice is a basic requirement of due process.

Clyde argues that the state statute’s rules “provide no clear standards for concealed carry licenses whatever.” Br. 16. To the contrary, one can learn about the different rules by consulting state law, which is available to everyone. Not so with local ordinances – one must learn about potentially scores of different rules for scores of different localities. If, as Clyde argues, learning the state rules is a burden to gun owners, how much more of a burden is it – if it is even possible – to learn rules which are multiplied a hundredfold? And given that Clyde’s ordinance creates a misdemeanor of the first degree, what public interest is served by subjecting to incarceration persons who rely on state law and are unaware of every local ordinance?

It goes without saying that persons generally know what state they are in, but may be unaware of which municipality they are in. Even when the locality is known, copies of municipal codes are relatively inaccessible and are frequently not current.

In addition to persons with Ohio licenses, R.C. § 2923.126(D)-(F) provides three other categories of persons who may carry a concealed handgun: a licensed person from another state recognized by the attorney general under a reciprocity agreement, peace officers (in and out of state), and qualified retired peace officers (in and out of state). All of these persons reasonably rely on Ohio state law for all rules concerning the carrying of concealed handguns. Inconsistent local ordinances

⁶Similar to this provision, knowing possession of a firearm is prohibited from Federal facilities if a conspicuous notice is posted. 18 U.S.C. § 930(a), (e). Such notice “shall be posted conspicuously at each public entrance,” and “no person shall be convicted of an offense under subsection (a) or (e) with respect to a Federal facility if such notice is not so posted at such facility, unless such person had actual notice” § 930(h). A notice is not conspicuously posted if one cannot see the notice until one is already in violation. *United States v. Strakoff* (5th Cir. 1983), 719 F.2d 1307, 1309-10.

nullify the reciprocity agreements entered into by the attorney general and violate the rights of all such qualified persons, leading to adverse extraterritorial effects. See further discussion in Part III, *infra*.

That exceptions to a firearm prohibition do not negate its character as a general law is exemplified by R.C. § 2923.17(A), which prohibits having or carrying “dangerous ordnance,” which is defined to include such items as a “semi-automatic firearm designed or specifically adapted to fire more than thirty-one cartridges without reloading.” “There is no question that R.C. 2923.17(A) is a general law.” *Cincinnati v. Baskin* (2006), 112 Ohio St.3d 279, 281, 859 N.E.2d 514 (holding that, unlike here, the ordinance was not in conflict with the general law).⁷ Various exceptions exist for different categories of persons. § 2923.17(C). The issuing authority may include restrictions on a license to possess or carry dangerous ordnance. § 2923.18(D).⁸

The statutes at issue were passed to promote public security. A city could not banish an authorized Ohio law enforcement official from a city park because she is armed. Nor may a city banish a person with a proper license issued by Ohio or another state, or a current or retired peace officer, from a city park because such persons possess firearms. The state has a fundamental interest in law enforcement, including choice of citizen and peace officer participation in promoting security, that may not be overridden by a locality.

The laws at issue evolved in part from a historical tradition explained in *Blackman v. City*

⁷See *id.* at 299 (O’Donnell, J., concurring in judgment) (agreeing that R.C. 2923.17(A) “is a general law That statute is a statewide police enactment, applies to all parts of the state, and prescribes a rule of conduct upon the citizens of Ohio.”).

⁸However, a municipal prohibition on a licensed use “is in conflict with the general laws of the state of Ohio and is arbitrary and unreasonable” *Northeast Ohio Regional Sewer Dist. v. Brooklyn* (1989), 64 Ohio App.3d 57, 58, 580 N.E.2d 796.

of *Cincinnati* (1941), 66 Ohio App. 495, 498, 35 N.E.2d 164, *aff'd.*, (1942), 140 Ohio St. 25, 42 N.E.2d 158,⁹ as follows:

From earliest times, an officer charged with the duty of preserving the peace and arresting offenders has had the authority to call upon bystanders to assist him in so doing. . . . The officer always had the right to call to his aid the posse comitatus. . . . It was one of the trinoda necessitas at common law. On call, it was the citizen who was obliged to report armed, apparelled, and with horse. . . . Hue and cry, watch and ward and posse comitatus were closely related, and were all a part of the one duty to help defend the realm.¹⁰

66 Ohio App. at 498.

The *Blackman* Court of Appeals added: “The officer may call upon the whole community under such circumstances. This common-law obligation of citizens is a part of the statute law of this state.” 66 Ohio App. at 499, citing General Code § 12857. As noted by the Supreme Court in *Blackman*, that statute “impose[d] the duty upon an individual, when requested, to render personal services with the means at his command in assisting a peace officer to apprehend or subdue a suspected or convicted criminal” 140 Ohio St. at 27. See current R.C. § 2921.23.

Finally, *Blackman* noted “the primary purpose of government to preserve the peace and punish disturbers thereof” 66 Ohio App. at 499. In addition to assisting law enforcement, citizens have a constitutional right to bear arms for their own defense and security. The legislature is entitled to set uniform, state-wide rules to promote the public safety through participation by both

⁹*Blackman* involved damages to a private automobile whose driver was ordered by a patrolman “to pursue another car, an occupant of which had fired some shots, apparently at persons sleeping in the nearby park.” 140 Ohio St. at 25. Then as now, apparently city parks were not always safe places.

¹⁰See *State ex rel. Hayes v. Davies* (Ohio Cir. Ct. 1905), 17 Ohio C.D. 601, 1905 WL 1140, *3 (“hue and cry shall be raised upon the felons, and they that keep the town shall follow with hue and cry with all the town and the towns near”) (quoting 4 Blackstone, *Commentaries* *293).

peace officers and citizens.

Klein v. Leis (2003), 99 Ohio St.3d 537, 541, 795 N.E.2d 633, upheld a previous version of the law on the carrying of handguns as follows: “The General Assembly has determined that prohibiting the carrying of concealed weapons helps maintain an orderly and safe society. We conclude that that goal and the means used to attain it are reasonable.” *Id.* at 541. Through passage of R.C. 9.68 and 2923.126, the General Assembly has determined that the carrying of concealed weapons by qualified licensees, subject to the specified exceptions but not subject to municipal regulation, helps maintain an orderly and safe society. As in *Klein*, that goal and the means used to attain it are reasonable.

Cleveland argues that the General Assembly has sought to nullify its restrictive ordinances even in the absence of conflict with the general law of the state. Amicus Br. 8. However, the general law of the state includes the right of citizens to possess and carry firearms for defense and security pursuant to state regulations. The General Assembly concluded that the laws at issue were necessary to promote public safety, in the same manner as it enacts legislation empowering law enforcement to protect public safety. A municipality has no authority to override such general law passed under the General Assembly’s police power.

Cleveland further argues that the General Assembly has failed to enact a “comprehensive scheme of regulations,” without the “corresponding regulation” existing in certain municipal ordinances. Br. 9-10. To the contrary, the General Assembly decided that a balance of public security and constitutional rights precluded a patchwork of local regulations which interfered with these interests by criminalization of conduct which should be lawful statewide. And contrary to Cleveland’s suggestion (Br. 11), registration of certain firearms, licensing of dealers, regulation of

carrying firearms, and background checks for transfer of firearms are provided by Ohio and/or Federal law.¹¹

Cleveland seeks to interject into this case its assault weapon ordinance, despite litigating that issue elsewhere. Br. 12. That issue is not before this Court. *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, upheld the ordinance on other grounds but did not consider general law-home rule issues which did not exist then. Assault weapon ordinances with similar definitions as that of Cleveland were held unconstitutionally vague in *Springfield Armory, Inc. v. City of Columbus* (6th Cir. 1994), 29 F.3d 250, and *Peoples Rights Organization, Inc. v. City of Columbus* (6th Cir. 1998), 152 F.3d 522. The General Assembly may well have enacted the instant statutes partially in order to have a clean and comprehensive firearm regulatory scheme without constitutional defects.¹² See *State v. Ulrich* (1984), 17 Ohio App.3d 182, 186, 478 N.E.2d 812 (the legislature is “presumed to be aware of, and to legislate in light of, the construction given to an area of law by other state courts”).

In sum, Clyde Codified Ordinance 2004-41 is in conflict with the general law of the state as set forth in R.C. 9.68 and 2923.126, and is thereby void.

II. AMICUS’ PROPOSITION OF LAW NO. 2: IN ENFORCING THE RIGHT TO BEAR ARMS FOR DEFENSE AND SECURITY, THE GENERAL

¹¹*E.g.*, R.C. § 2923.18 (license for dangerous ordnance), 26 U.S.C. § 5841 (registration of certain firearms), 18 U.S.C. § 923 (dealer licensing), 18 U.S.C. § 922(t) (background checks).

¹²The Federal assault weapon law expired and was not renewed. 18 U.S.C. § 922(v)(1994-2004). The National Institute of Justice concluded that “We cannot clearly credit the ban with any of the nation's recent drop in gun violence,” and noted that assault weapons were “rarely used in gun crimes even before the ban.” Christopher S. Koper, “An Updated Assessment of the Federal Assault Weapons Ban,” *Report to the National Institute of Justice, U.S. Dept. of Justice*, at 3, 96 (June 2004). http://www.sas.upenn.edu/jerrylee/jlc-new/Research/Koper_aw_final.pdf.

ASSEMBLY MAY DISPLACE A MUNICIPALITY'S ABILITY TO REGULATE¹³

R.C. 9.68(A) declares that, other than as provided by the Constitutions and Laws of the United States and Ohio, a person may possess a firearm without further restriction. It also declares that such uniformity is necessary to protect a constitutional right as follows:

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.

That the right predated said Constitutions was made clear in the Ohio Constitution of 1802, the Bill of Rights of which began with the following preamble: "That the general, great and essential principles of liberty and free government may be recognized and forever unalterably established, we declare:" Ohio Const., Art. VIII (1802). The various guarantees followed, including the following: "That the people have a right to bear arms for the defense of themselves and the State" *Id.* § 20.¹⁴

While the preamble was edited out of the Bill of Rights in the 1851 Constitution, it remains implicit as a statement of the nature of a declaration of rights. Thus, Ohio Const., Art. I, § 1, continues to provide: "All men . . . have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and seeking

¹³This is a reformulation of Appellant's proposition of law No. 2, which states: "A municipality's ability to regulate city parks is a power of local self government and, as such, cannot be limited or diminished by the General Assembly."

¹⁴*See Robertson v. Baldwin* (1897), 165 U.S. 275, 281-82 (the Bill of Rights "embod[ies] certain guarantees and immunities which we had inherited from our English ancestors" which were "incorporat[ed] . . . into the fundamental law," including "the freedom of speech and of the press (article 1)" and "the right of the people to keep and bear arms (article 2)")

and obtaining happiness and safety.”¹⁵ Moreover, the constitutional text uses identical or equivalent categorical phrases which preclude a reading that some rights are more (or less) fundamental than others.¹⁶

Thus, § 3 provides that “*The people have the right to assemble together, in a peaceable manner . . .*,” while § 4 provides: “*The people have the right to bear arms for their defense and security . . .*” (Emphasis added.) Almost identical phraseology appears in § 14: “*The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures, shall not be violated . . .*” (Emphasis added.) Section 20 provides: “*This enumeration of rights shall not be construed to impair or deny others retained by the people . . .*” (Emphasis added.) So the rights to bear arms, to assemble, to defend life, to free speech, and against unreasonable searches are part of an “enumeration of rights” which are “retained by the people.”

No constitutional right is “less ‘fundamental’ than” others, and “we know of no principled basis on which to create a hierarchy of constitutional values or a complementary ‘sliding scale’ of standing . . .” *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.* (1982), 454 U.S. 464, 484. “This constitutional protection must not be interpreted in a hostile or niggardly spirit.” *Ullmann v. United States* (1956), 350 U.S. 422, 426. “To view a

¹⁵Referring to this clause and the arms guarantee, *In re Reilly* (Ohio Com. Pl. 1919), 31 Ohio Dec. 364, 1919 WL 1022, *3, noted: “These rights are inalienable, and fundamental, and can not be abridged or restricted by a city council”

¹⁶“Like other fundamental rights, the right to bear arms for security and defense should normally be protected by strict scrutiny. To survive strict scrutiny, a restriction must be necessary to serve a compelling government interest.” *Klein v. Leis* (2003), 99 Ohio St.3d 537, 543, 795 N.E.2d 633 (O’Connor, J., dissenting) (citations omitted). Although this Court has adopted a “reasonableness” test for this right in lieu of the usual compelling state interest test, *id.* at 541, disposition of this case does not require reconsideration of that issue.

particular provision of the Bill of Rights with disfavor inevitably results in a constricted application of it. This is to disrespect the Constitution.” *Id.* at 428-29.

“Under Section 1, Article II of the Ohio Constitution, and with the exception of the municipal Home Rule Amendment contained in Section 3, Article XVIII of the Ohio Constitution, the police power of this state is entrusted to the Ohio General Assembly.” *Holiday Homes, Inc. v. Butler Cty. Bd. of Zoning Appeals* (1987), 35 Ohio App.3d 161, 165, 520 N.E.2d 605 (also noting areas in which “the General Assembly has delegated a portion of its police power to Ohio counties”). It would be difficult to think of a higher duty of the General Assembly than would be striking the proper balance between the protection of Bill of Rights guarantees and protecting the public safety. Indeed, the General Assembly clearly understood that regulating the bearing of arms according to statewide standards promotes – as the Constitution declares – “defense and security.”

Exclusive regulation of the right to bear arms for defense and security by Federal and State law, constitutional and statutory, provides uniform rules necessary for meaningful exercise of the right without overcriminalization of otherwise lawful conduct. Even under that standard, the right to bear arms is the only substantive right for which one may be arrested and tried, and one must prove that she was acting as a prudent person under the circumstances. *See Klein v. Leis* (2003), 99 Ohio St.3d 537, 795 N.E.2d 633 (upholding prohibition on carrying concealed weapon with “prudent person” affirmative defense). R.C. 9.68 and 2923.126 were enacted to bring certainty to, and make less hazardous, the exercise of this right. A patchwork of local laws interferes with this objective and leaves exercise of the right filled with uncertainties.

R.C. 9.68(A) states that firearms may not be regulated except as allowed by, *inter alia*, the Ohio Constitution, which Clyde correctly notes includes the Home Rule provision. Br. 15.

However, the guarantees of the Bill of Rights restrains both the General Assembly and localities. In this instance, the General Assembly is seeking to protect constitutional rights and the public safety, which it found precludes a multiplicity of local restrictions. Uniform state regulation contributes to knowledge allowing persons who exercise the right to be aware that they are acting lawfully and are not stepping on hidden local land mines. Having uniform rules facilitates exercise of this right which under state and federal law alone is subject to numerous restrictions.

In other states, legislation to regulate firearms in a manner consistent with the right to bear arms has been held to displace local ordinances. *Ortiz v. Commonwealth* (1996), 545 Pa. 279, 286, 681 A.2d 152, 156, held that, in a home-rule state, an assault weapon ban ordinance was preempted by state law as a matter of statewide concern. The court rejected the city's claim that the state firearms law was not uniform, noting that "the act limiting municipal regulation of firearms and ammunition, applies in every county including Philadelphia." *Id.* at 285. Similar to that of Ohio, Pennsylvania's Constitution guarantees "The right of the citizens to bear arms in defense of themselves," and this affects the preemption analysis as follows:

Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. . . . Thus, regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.

Id. at 287.

Doe v. Portland Housing Authority (Me. 1995), 656 A.2d 1200, 1203, holding that a state law "was enacted to reinforce the [right-to-bear arms] amendment and to ensure uniformity in the regulation of guns," invalidated a municipal ordinance banning firearms in public housing. Similarly, *Schwanda v. Bonney* (Me. 1980), 418 A.2d 163, 166-67, rejected home-rule arguments

and invalidated an ordinance restricting concealed-weapon licensees because “the need for uniform application of the concealed weapons law precludes local regulation resulting in such inconsistencies.”

City of Portland v. Lodi (1989), 94 Or. App. 735, 737-38, 767 P.2d 108, noted: “Cities are empowered under home rule to enact ordinances that punish the same conduct that is punished by state criminal law. . . . The limitation on their power is that ordinances cannot conflict or be incompatible with state statutes.” The ordinance was held invalid on the basis that “the statutory policy has been to preserve broadly the right to bear arms Thus the Portland ordinance prohibits an act that the statute permits” *Id.* at 438.

In another home rule state, a uniform state law establishing the places where a person with a license to carry a concealed pistol may or may not carry such firearm was held to preclude a local ordinance prohibiting possession of a firearm in municipal buildings. *Michigan Coalition for Responsible Gun Owners v. City of Ferndale* (2003), 256 Mich. App. 401, 414, 662 N.W.2d 864, 872 (“the Legislature made a clear policy choice to remove from local units of government the authority to dictate where firearms may be taken”).

California has no arms guarantee in its constitution, but it has “state laws allowing private citizens to possess handguns for self-protection and other lawful purposes” which were displaced by a local handgun ordinance. *Fiscal v. City & County of San Francisco* (Cal. App. 1 Dist. 2008), 2008 WL 81550, *7. The ordinance was not saved by that state’s home-rule guarantee for the following reasons:

These laws of statewide application reflect the Legislature’s balancing of interests—on the one side the interest of the general public to be protected from the criminal misuse of firearms, on the other, the interests of law-abiding citizens to be

able to purchase and use firearms to deter crime, to help police fight crime, to defend themselves, and for hunting and certain recreational purposes. If every city and county were able to opt out of the statutory regime simply by passing a local ordinance, the statewide goal of uniform regulation of handgun possession, licensing, and sales would surely be frustrated.¹⁷

Id. at *14.

Local ordinances have been held in conflict with comprehensive state-wide firearms statutes in a variety of other contexts.¹⁸

In sum, the right to bear arms for defense and security is constitutionally protected and is thus a matter of statewide concern. The General Assembly has enacted general law which provides uniform rules for exercise of this right consistent with and to promote public safety. The local ordinance is in conflict with the general law and is void.

III. AMICUS' PROPOSITION OF LAW NO. 3: ORDINANCES ADVERSE TO LICENSED CARRY UNDER STATE LAW HAVE UNCONSTITUTIONAL EXTRATERRITORIAL EFFECTS

In addition to persons with Ohio licenses, R.C. § 2923.126 provides three other categories of persons who may carry a concealed handgun: “A person who holds a license to carry a concealed

¹⁷See also *Doe v. City & County of San Francisco* (1982), 136 Cal. App.3d 509, 512, 186 Cal. Rptr. 380, 385 (in home-rule state, “in an area of statewide concern a local legislative body may act only if the state has not revealed an intention to occupy the field to the exclusion of all local regulation”; state preempted local ordinance prohibiting handguns).

¹⁸*Dwyer v. Farrell* (1984), 193 Conn 7, 14, 475 A.2d 257 (“the [firearms] ordinance effectively prohibits what the state statutes clearly permit” and was thus void); *Montgomery County v. Maryland* (1985), 302 Md. 540, 548-49, 489 A.2d 1114, 1118 (statute preempted local laws restricting the carrying or transport of loaded handguns); *City of Chicago v. Haworth* (1999), 303 Ill.App.3d 451, 708 N.E.2d 425, 429, 236 Ill.Dec. 839 (“the City’s [handgun] registration requirement places an unreasonable burden on private detectives who live outside Chicago”; home rule held not to preclude preemption of local law); *NRA v. City of South Miami* (Fla. 3d DCA 2002), 812 So.2d 504, 506 (gun storage ordinance preempted); *HC Gun & Knife Shows, Inc. v. City of Houston* (5th Cir. 2000), 201 F.3d 544, 548 (storage and registration ordinance preempted).

handgun that was issued pursuant to the law of another state that is recognized by the attorney general pursuant to a reciprocity agreement” (D); “a peace officer,” including those from other states (E); and “a qualified retired peace officer” with appropriate identification and a firearm requalification certification, including those from other states (F). Having uniform state standards accommodates the reliance interests of such persons, including those from Ohio and those from other states. Arresting such persons from out of town or out of state who, in reliance on state law, carried a firearm for defense and security in a city park has adverse extraterritorial effects. Cf. Clyde Br. 18.

R.C. § 109.69(A)(1) provides for reciprocity agreements as follows:

The attorney general shall negotiate and enter into a reciprocity agreement with any other license-issuing state under which a license to carry a concealed handgun that is issued by the other state is recognized in this state if the attorney general determines that both of the following apply:

(a) The eligibility requirements imposed by that license-issuing state for that license are substantially comparable to the eligibility requirements for a license to carry a concealed handgun issued under section 2923.125 of the Revised Code.

(b) That license-issuing state recognizes a license to carry a concealed handgun issued under section 2923.125 of the Revised Code.

Currently, the Attorney General has entered into reciprocity agreements with 18 other states.

A copy of the Agreement with each State is available at the website <http://www.ag.state.oh.us/le/prevention/concealcarry/reciprocity.asp>. For an example, see Reciprocity Agreement Between Ohio Attorney General Marc Dann and the State of Kentucky, Appendix to this brief. The Agreement provides: “The Attorney General, pursuant to the authority provided by Ohio Revised Code § 109.69, hereby agrees that the State of Ohio shall recognize all valid licenses to carry concealed handguns issued pursuant to Reciprocal State’s applicable concealed handgun statute.” *Id.* at 2. It further states: “Either party will notify the other in writing of any change to their respective carry concealed handgun statute or any regulation issued thereunder

that may materially affect the eligibility of the recognition agreed bo hereunder.” *Id.* Officials from other states entering into such agreements and license holders from these states would certainly believe that these recognized licenses would be valid to carry handguns throughout Ohio in compliance with Ohio state law standards.

For Ohio to declare a statewide policy of uniformity and to enter into reciprocity agreements with other states whose citizens rely on such uniform rules, and then to allow localities to have essentially secret local rules, is fundamentally unfair to the other states and their citizens who have licenses to carry and who travel in and visit Ohio. Such extraterritorial power of localities to nullify uniform state rules and agreements with other states raises substantial issues under the Due Process, Privileges and Immunities, and Commerce Clauses of the United States Constitution.

This Court should construe local power under Ohio Const., Article XVIII, § 3, in a manner to avoid raising such constitutional issues. “Ohio law abounds with precedent to the effect that constitutional issues should not be decided unless absolutely necessary.” *Hall China Co. v. Public Utilities Commission* (1977), 50 Ohio St.2d 206, 209, 364 N.E.2d 852. Moreover, “a court will not exercise its power to determine the constitutionality of a legislative enactment unless it is absolutely necessary to do so.” *Greenhills Home Owners Corp. v. Village of Greenhills* (1966), 5 Ohio St.2d 207, 212, 215 N.E.2d 403.¹⁹ Federal constitutional issues may be avoided and R.C. 9.68 and 2923.126 saved from invalidity by construing Ohio Const., Article XVIII, § 3, not to condone ordinances which have adverse extraterritorial effect.

¹⁹In applying the rule of constitutional doubt, it does not matter that precedent has not resolved the constitutional issues at stake. *See Jones v. United States* (1999), 526 U.S. 227, 251 (“the Government’s view would raise serious constitutional questions on which precedent is not dispositive. Any doubt on the issue of statutory construction is hence to be resolved in favor of avoiding those questions.”).

Due process of law, guaranteed by U.S. Const. Amend. XIV, requires notice of the law, issues of which may arise in a mixed vagueness-accessibility context. Here, state law proclaims that its standards govern exclusively, while localities assert their own unknown restrictions. “[B]ecause we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Grayned v. City of Rockford* (1972), 408 U.S. 104, 108, quoted in *Peoples Rights Organization, Inc. v. City of Columbus*, 152 F.3d 522 (6th Cir. 1998) (holding assault weapon ordinance vague).

While state law is accessible to residents and nonresidents alike, local ordinances are difficult or impossible to locate, particularly by nonresidents. “To enforce such [an ordinance] would be like sanctioning the practice of Caligula who ‘published the law, but it was written in a very small hand, and posted up in a corner, so that no one could make a copy of it.’” *Screws v. United States* (1945), 325 U.S. 91, 96, quoting Suetonius, *Lives of the Twelve Caesars*, p. 278. Clyde Codified Ordinance 2004-41 is about as accessible as was a law of Caligula.

The right to travel is also adversely affected by the type of obscure local ordinances at issue here. The reciprocity provisions in R.C. §§ 109. 69 and 2923.126 avoid discrimination against nonresidents that may arise under U.S. Const., Art. IV, § 2, which provides: “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” The right to travel under this provision guarantees “the right of free ingress and regress to and from neighboring states” and “the right of a citizen of one State . . . to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State.” *Saenz v. Roe*, 526 U.S. 489, 500-01 (1999). Local restrictions frustrate this objective.

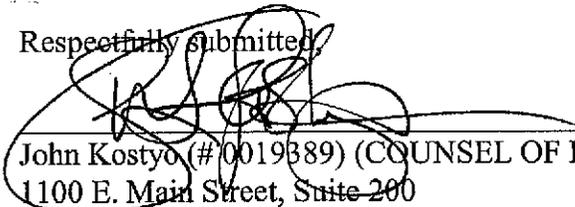
Much travel is commercial, some commercial travel requires armed protection, and adverse local regulations may violate the Dormant Commerce Clause in U.S. Const., Art. I, § 8. “One element of our dormant Commerce Clause jurisprudence has been the principle that the States may not impose regulations that place an undue burden on interstate commerce, even where those regulations do not discriminate between in-state and out-of-state businesses.” *United States v. Lopez* (1995), 514 U.S. 549, 579-80.

In sum, this Court should avoid the above federal constitutional issues, and further avoid the drastic step of declaring R.C. 9.68 and 2923.126 unconstitutional, by construing Ohio Const., Article XVIII, § 3, not to condone ordinances, such as the ordinance at issue here, which have adverse extraterritorial effect.

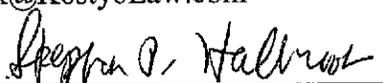
CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,



John Kostyo (#0019389) (COUNSEL OF RECORD)
1100 E. Main Street, Suite 200
Findlay, OH 45840
(419) 422-7700
Fax (419) 425-0042
jfk@KostyoLaw.com



Stephen P. Halbrook (Pro Hac Vice)
10560 Main Street, Suite 404
Fairfax, Virginia 22030
(703) 352-7276
Fax (703) 359 0938
protell@aol.com

Counsel for Amicus Curiae National Rifle Association of America, Inc.

APPENDIX

RECIPROCITY AGREEMENT BETWEEN
OHIO ATTORNEY GENERAL MARC DANN
AND
THE STATE OF KENTUCKY

This Reciprocity Agreement ("Agreement") is made and entered into effective this 9th day of APRIL, 2007, by and between Marc Dann, the Attorney General of Ohio ("Attorney General"), 30 East Broad Street, 17th Floor, Columbus, Ohio 43215-3400, and the State of Kentucky, c/o Kentucky State Police, Legal Office, 919 Versailles Road, Frankfort, Kentucky 40601 ("Reciprocal State") who hereby agree as follows:

RECITALS

Whereas, Ohio Revised Code §109.69 authorizes the Attorney General to enter into reciprocity agreements with other states under which a license to carry a concealed handgun that is issued by such foreign state is recognized in this state;

Whereas, the Reciprocal State will, pursuant to this Reciprocity Agreement, agree to recognize, in its state, a license to carry a concealed handgun that is issued by the State of Ohio;

Whereas, the Attorney General has determined that the Reciprocal State meets the requirements for entering into a Reciprocity Agreement in accordance with Ohio Revised Code §109.69; and

Whereas, the parties desires to enter into this Reciprocity Agreement under the terms and conditions set forth herein.

Wherefore, the parties hereby agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The foregoing recitals are incorporated herein by reference.
2. **Findings.** The Attorney General hereby determines that: a) the eligibility requirements imposed by Reciprocal State to carry a concealed handgun are substantially comparable to the license eligibility requirements under Ohio Revised Code §2923.125, and b) Reciprocal State will, pursuant to this Reciprocity Agreement, recognize a license to carry a concealed handgun issued under Ohio Revised Code §2923.125.

3. **Reciprocity.**

- a. Reciprocal State hereby agrees to recognize all valid licenses to carry concealed handguns issued pursuant to Ohio Revised Code §2923.125.
- b. The Attorney General, pursuant to the authority provided by Ohio Revised Code §109.69, hereby agrees that the State of Ohio shall recognize all valid licenses to carry concealed handguns issued pursuant to Reciprocal State's applicable concealed handgun statute.

4. **Handgun Definition.** The definition of "handgun" under this Reciprocity Agreement shall have the same meaning as the term is defined in Ohio Revised Code §2923.11. This agreement shall not apply to any other type of weapon.
5. **Statutory Changes.** Either party will notify the other in writing of any change to their respective carry concealed handgun statute or any regulation issued thereunder that may materially affect the eligibility of the recognition agreed to hereunder.
6. **Notification.** Any notice to be issued hereunder shall be sent by regular United States mail, return receipt requested, or by hand delivery to the address for either party set forth above. Either party may change their address for notification by sending notice of the new address in the manner provided by this section.
7. **Termination.** This Reciprocity Agreement shall remain in effect as long as the respective statutory authority in each state authorizes the reciprocal privileges granted by this agreement or until terminated in writing by either party with thirty (30) days written notice.
8. **Modification.** Modification of this Reciprocity Agreement may only be made by mutual written agreement of the parties.
9. **Headings.** The headings in this Reciprocity Agreement have been inserted for convenient reference and shall not be considered in any questions of interpretation or construction of this agreement.

10. **Severability.** The provisions of this agreement are severable and independent, and if any such provision shall be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision, to the extent enforceable in any jurisdiction, shall, nevertheless, be binding and enforceable.
11. **Execution.** This Reciprocity Agreement is not binding upon either party unless executed in full.

IN WITNESS WHEREOF, the parties hereto have caused this Reciprocity Agreement to be executed by the Attorney General and the Reciprocal State's duly authorized officer, as of the day and year first above written.

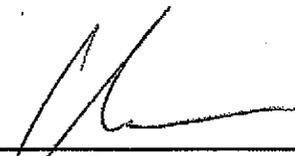
RECIPROCAL STATE:

**MARC DANN
ATTORNEY GENERAL OF OHIO**

By:


4/9/07

By:


Marc Dann

Its:

on behalf of Commission
of K.S.P.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief of Amicus Curiae National Rifle Association of America, Inc. was sent by first class U.S. mail, postage paid, this 24th day of January, 2008, to:

John C. McDonald
Stephen J. Smith
Matthew T. Green
Schottenstein, Zox & Dunn Co., L.P.A.
250 West Street
Columbus, Ohio 43215-2538

Barry W. Bova
817 Kilbourne Street
Bellevue, Ohio 44811-9431

Daniel T. Ellis
Lydy & Moan, LTD.
4930 Holland-Sylvania Road
Sylvania, Ohio 43560-2149

L. Kenneth Hanson, III
Firestone, Brehm, Hanson, Wolf, Young, LLP
15 West Winter Street
Delaware, Ohio 43015

Marc E. Dunn
Elise Porter
Frank M. Strigari
30 East Broad Street, 17th Floor
Columbus, Ohio 43215



John F. Kostyo, Ohio Regis No.0019389
Counsel of Record