

In the
Supreme Court of Ohio

OHIOANS FOR CONCEALED CARRY, INC., et al.	:	Case No. 2007-0960
	:	
Plaintiffs-Appellees,	:	On Appeal from the
	:	Sandusky County
	:	Court of Appeals,
v.	:	Sixth Appellate District
	:	
CITY OF CLYDE, et al.	:	Court of Appeals
	:	Case Nos. S-06-039
Defendants-Appellants.	:	S-06-040

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INTRODUCTION

After years of careful and detailed debate, the General Assembly enacted a comprehensive statewide scheme to enable law-abiding citizens to carry concealed handguns in Ohio. Proponents and opponents debated whether to have such a law at all, and if so, what standards should be adopted to acquire a concealed carry license. Legislators also considered what locations should be open for licensees to carry, what locations should be off limits (such as schools), and what locations should be left for private property owners to decide whether to allow guns to be carried on their property. As a result of these deliberations, the General Assembly passed R.C. 2923.16 (the “Concealed Carry Law”) in 2004 and R.C. 9.68 (the “Preemption Provision”) in 2007.

The Concealed Carry Law establishes a comprehensive statewide scheme to govern concealed carry law in Ohio, assuring law-abiding citizens that if they follow the rules, take the test, and obtain a license, they may carry concealed handguns in Ohio. The law gives licensees an easy-to-remember list of places they may not take their guns, as it forbids carrying in some expected places, such as schools, bars, courthouses, and airplanes. And by allowing all other private property owners to decide for themselves, while requiring them to post signs if they wish to restrict concealed carry, the law comprehensively balances the rights of property owners and licensees. Owners decide what happens on their property, as long as they are not in a highly-regulated activity such as childcare or liquor sales. And licensees receive fair notice simply by looking for a sign expressing the owner’s rules. Whatever policy proponents and opponents have to say about this system, it is surely a comprehensive scheme, with parts that all work together.

Now, the City of Clyde asks the Court to chip away at this statewide scheme, claiming that its rights to local home rule trump the State’s Concealed Carry Law. Clyde asserts that its

argument is narrow, insisting that it merely wants to ban concealed carry in Clyde's city-owned parks, but that insistence is wrong, as Clyde's arguments are not only erroneous, but they also have broader implications that put Ohio's entire Concealed Carry Law at risk. Accordingly, the Court should reject Clyde's request.

Clyde specifically contends that its power to ban guns in the parks falls within the home rule authority reserved to cities under the Ohio Constitution's Home Rule Amendment, Article 18, Section 3, which allows cities to exercise rights of self-government and to exercise local police power—as long as those local police-power regulations do not conflict with general state laws. First, Clyde argues that the Concealed Carry Law is not a valid statewide general law, and thus cannot override a conflicting city ordinance, because it is not “uniform.” This is so, says Clyde, because the statute allows private property owners to decide for themselves, so that different properties have different rules, and because the law treats public property differently from private property. Second, Clyde alternatively argues that the Concealed Carry Law does not even address a statewide concern at all, and that this issue is solely a matter of local self-government—that is, that it falls in that narrow field in which the State cannot legislate at all, even without conflicting State ordinances.

Clyde is wrong on both propositions, as a matter of law and of common sense. First, the law is uniform. In the home rule context, the Court has invalidated laws for non-uniformity only when those laws arbitrarily treated some cities differently from others, and that is not the case here. And even applying the uniformity requirement more broadly to classifications among citizens, the law is still uniform. The Court has explained that classifications among citizens (or here, properties) are allowable as long as they are not arbitrary, unreasonable, or capricious. The classifications here are nowhere near arbitrary, as they provide a workable system that licensees

and property owners can understand and implement. Moreover, Clyde's view is unworkable, as it would force the State to set terms for all types of property in Ohio, overriding private property interests and setting up categories that would likely be impossible for owners and licensees to follow, rendering concealed carry a nullity.

Equally important, Clyde's uniformity argument cannot be limited to the issue of city parks, but would necessarily mean that cities could trump the Concealed Carry Law in all areas within city limits, regardless of property ownership. Under the Court's settled doctrine, a non-uniform law can be overridden by *any* conflicting city ordinance, regardless of the city ordinance's reach, simply because the conflicting State law is not a valid general law. In other words, a city could pass an outright ban on concealed carry, even in private establishments. If someone points out the conflicting State law, the answer would be that the State law is not uniform—merely, in Clyde's view, because it lets property owners decide for themselves—so the State law would yield to any city's ban.

Second, the concealed carry issue is a matter of statewide concern, not a matter of strictly local self-government, and Clyde's second proposition to the contrary also threatens the entire Concealed Carry Law. The Court has confirmed that the statewide concern doctrine and the local self-government doctrine are two sides of the same coin. See *Am. Fin. Servs. Ass'n v. City of Cleveland* (2006), 112 Ohio St. 3d 170, 2006-Ohio-6043 (“AFSA”), ¶¶ 26-31. A matter that is “*strictly local*” is one for which the State has no concern at all, such that the State may not intrude at all, regardless of any conflict with local law. Concealed carry is not such a purely local concern: a statewide approach is the only plausible way to have a licensing scheme at all, because licensees need to travel about without having different rules every few blocks. If the statewide scheme did not govern locales, even issuing statewide licenses would be a vain act, as

licensees could not move about without learning all of the State's, or at least a region's, patchwork of municipal regulations. Indeed, that point is illustrated by Clyde's reliance on cases regarding local roads. If cities could vary the rules for safe carriage of guns in vehicles driving through their city limits, the entire scheme would surely collapse, as a law-abiding citizen would have to plan his driving route around the county with a map in one hand and books of regulations in the other. Similarly, under Clyde's view that cities can control concealed carry on streets, a licensee could not take a long walk—or even a short walk, with the small size of some cities—without passing through several jurisdictions and needing to know all their laws along the way. Thus, not only is Clyde wrong to call this issue purely local, it is also wrong to say that a decision in their favor would affect only parks.

In sum, Clyde's arguments cannot be accepted without undermining the State's carefully crafted statewide scheme for concealed carry. This case is not about the merits of allowing concealed carry, as the General Assembly has already decided that law-abiding citizens may carry concealed handguns. Nor is this case about the merits of allowing concealed carry in parks. It is about whether the State made a valid choice in opting for an easy-to-understand statewide system, or whether cities that disagree with the State's policy choices may undermine the entire scheme by imposing a patchwork of conflicting laws over the State law.

The Court should reject Clyde's request, and it should uphold the State's Concealed Carry Law.

STATEMENT OF THE CASE AND FACTS

A. The General Assembly adopted a comprehensive statewide scheme to govern concealed carry in Ohio.

In January 2004, the General Assembly enacted a comprehensive statewide scheme designed to regulate the entire arena of concealed carry licensure in Ohio. The bill, which became effective April 8, 2004, provides for an entire licensing scheme and includes the requirements for licensure, as well as rules pertaining to where and when a properly licensed citizen can carry a concealed handgun. Under the law, a properly licensed individual may carry a concealed handgun anywhere in the state, subject to specific exceptions, unless she knowingly is in a location where concealed carry is prohibited. See R.C. 2923.126(A) & (C)(3). Excepted areas include police stations, day care centers, school safety zones, courthouses, premises where liquor is served, and anywhere concealed carry is prohibited by federal law. R.C. 2923.126(B). The law also grants private landowners the right to prohibit licensees from carrying concealed handguns on their property, so long as they post a sign to that effect in a conspicuous location. R.C. 2923.126(C)(3).

The General Assembly expressly intended the Concealed Carry Law to operate as a comprehensive statewide scheme, prohibiting municipalities from enacting local ordinances restricting properly-licensed Ohioans' rights to carry concealed handguns. Section 9 of the bill states:

Section 9. The General Assembly finds that licenses to carry concealed handguns are a matter of statewide concern and wishes to ensure uniformity throughout the state regarding the qualifications for a person to hold a license to carry a concealed handgun and the authority granted to a person holding a license of that nature. It is the intent of the General Assembly . . . to enact laws of a general nature, and, by enacting those laws of a general nature, the state occupies and preempts the field of issuing licenses to carry a concealed handgun and the validity of licenses of that nature. No municipal corporation may adopt or continue in existence any ordinance, and no township may adopt or continue in existence any resolution, that is in conflict with those sections, including, but not limiting to, any ordinance or resolution that

attempts to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed.

(Emphasis added). Thus, the General Assembly announced its clear intent to prohibit local regulation placing restrictions on the localities where licensed individuals can carry concealed handguns in Ohio.

The General Assembly later passed Sub. H.B. 347, which went into effect on March 14, 2007. That bill amended R.C. 2923.126, and also enacted R.C. 9.68, which provides in pertinent part:

The individual right to keep and bear arms, . . . 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.

The text of the statute conveys the General Assembly's intent that state laws regulating the "transport" and "carrying" of handguns apply uniformly throughout the state.

B. The City of Clyde adopted an ordinance to forbid concealed carry in Clyde's park, and it stated its intent to conflict with the State's Concealed Carry Law.

The City of Clyde disagreed with the Assembly's policy choice as it applied to city parks, so it passed a conflicting ordinance to ban concealed carry in Clyde's parks. The conflict here is an undisputed fact, as indeed, Clyde stated its intent to conflict in the text of the ordinance.

Clyde Ordinance No. 2004-41 provides both the ban and the conflict:

[N]o person located within the confines of any City Park shall knowingly carry or have, on or about his person or readily at hand, any deadly weapon, *irrespective of whether such person has been issued a license to carry a concealed handgun pursuant to Ohio R.C. 2923.125 or pursuant to a comparable provision of the law of any other state.*

App. at 18 (emphasis added). The ordinance restricts properly licensed Ohioans from carrying concealed handguns in Clyde city parks, in conflict with R.C. 2923.126.

C. Litigation ensued, leading to this appeal.

Soon after Clyde enacted its Ordinance, Plaintiff-Appellee Ohioans for Concealed Carry, Inc. (“OCC”), sued Clyde in the Sandusky Court of Common Pleas seeking injunctive and declaratory relief. The Ohio Attorney General’s Office intervened to defend the Concealed Carry Law, and all three parties moved for summary judgment. OCC and the Attorney General argued that Clyde’s ordinance was not enforceable because it conflicted with R.C. 2923.126 and 9.68, general laws of the State of Ohio. Clyde argued that their ordinance trumped state law.

The trial court granted summary judgment for Clyde, citing prior precedent from the Sixth District Court of Appeals, *Toledo v. Beatty* (6th Dist. 2006), 169 Ohio App.3d 502, 2006-Ohio-4638. The parties agreed that Clyde would not enforce the ordinance pending appeal. The Sixth District Court of Appeals reversed. The Sixth District relied primarily on H.B. 347, enacted after the *Beatty* decision, which, as detailed above, enacted R.C. 9.68 and re-affirmed the General Assembly’s intent to displace local ordinances such as Clyde’s. Clyde appealed, and this Court granted jurisdiction on September 26, 2007.

ARGUMENT

Ohio's Concealed Carry Law, R.C. 2923.126, is part of a statewide, comprehensive scheme to govern the concealed carry of handguns throughout the State. While the particular statute, R.C. 2923.16, focuses on where licensees may carry, and certain other matters, other parts of the broader scheme govern how citizens obtain licenses, what training and testing is required, and so on. While those other statutes are not directly at issue, they demonstrate how comprehensive the scheme is, and they show the need for a uniform statewide system. And they show the consequences of allowing a city ordinance such as Clyde's to trump the Concealed Carry Law. Surely a city cannot ban all concealed carry within the city limits, nor can a city require an extra hour of training or otherwise change the requirements for obtaining a license. But as explained below, Clyde's arguments, properly understood, would lead to such results. Equally important, Clyde's arguments are based on a misreading of this Court's home rule precedent.

The Court should reject both of Clyde's propositions of law. First, the Concealed Carry Law is a valid general law, because it operates uniformly throughout the State. Thus, it overrides Clyde's conflicting ordinance. Second, the Concealed Carry Law is a matter of statewide concern, requiring a comprehensive scheme that allows all citizens to know their rights throughout the State. It is not a matter of purely local self-government.

Consequently, the Court should uphold the State's Concealed Carry Law, and it should reject Clyde's attempt to replace State law with a patchwork of city-based laws around Ohio.

Attorney General's Proposition of Law No. 1:

Ohio's Concealed Carry Law, R.C. 2923.126, is a general law that is part of a statewide and comprehensive legislative enactment and overrides any conflicting local ordinance.

A. Ohio's Home Rule Amendment allows cities to exercise police powers concurrent with the State, but valid State laws override conflicting local ordinances.

As the Court has often explained, Ohio's Home Rule Amendment grants cities certain powers, but state law often can and does override local law. The Amendment (Section 3, Article XVIII of the Ohio Constitution) reserves power to municipalities over matters of local self-government, but prohibits municipal police and sanitary regulations when they conflict with a state general law. Specifically, the Amendment 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." Ohio Const. Art. XVIII, Sec. 3. Generally, this gives cities authority to regulate local matters, but leaves authority over matters of statewide concern to the General Assembly. *Am. Fin. Servs. Ass'n v. City of Cleveland* (2006), 112 Ohio St. 3d 170, 2006-Ohio-6043 ("AFSA"), ¶ 27.

The Court applies three different layers of home rule analysis, each with multi-prong tests, to determine "whether a provision of a state statute takes precedence over a municipal ordinance" under the Home Rule Amendment. See *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, ¶ 9. While these layers might seem complicated, the first two layers actually overlap, as the Court clarified in *AFSA*, and as explained below. Further, while the State includes the entire analysis for context, Clyde's conflict argument focuses on just one issue, namely, whether the state law is "uniform."

First, the Court applies a binary test to see which clause of the Amendment is at issue: the "powers of local self-government" half, or the "local police" power half. *AFSA*, 2006-Ohio-6043 at ¶ 23. If the municipal ordinance "relates solely to self-government, the analysis stops,"

and the ordinance is valid, as conflicting state laws cannot override those rare matters of local self-government. See *id.* The *AFSA* Court explained that in most cases, it “is more likely” that a city is exercising “concurrent police power rather than the right to self-government,” so an “ordinance that is in conflict must yield in the face of a general state law.” *Id.* But for purposes of Clyde’s, and the State’s, first proposition, the Clyde Ordinance can and should be treated as an exercise of the police power.¹

Second, in analyzing possible conflicts between concurrent exercises of the police power, the Court applies a three-part test. Under the test, the state statute takes precedence when “(1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.” *Canton*, 2002-Ohio-2005 at ¶ 9. In some cases, the Court has started with this three-part test, but as the Court explained in *AFSA*, the second part of this test is identical to what the Court called the “first step” in *AFSA*: the classification of an ordinance as local self-government or police power. And the first part of the test is not a way to resolve conflicts, but instead asks whether a conflict truly exists. If no conflict exists, both a local ordinance and a state law survive. Here, all agree that the Clyde Ordinance conflicts with the state Concealed Carry Law, as the Clyde Ordinance seeks to prohibit what the state law expressly allows: carrying a concealed weapon, when duly licensed, into a city park. Thus, the sole issue is whether the state law is a “general law.”

In *Canton*, the Court announced a four-prong test for determining whether a state statute is a “general law,” and that test is the third and final layer of analysis. As re-stated in *AFSA*, the *Canton* test requires four things for a state statute to constitute a general law:

[A] statute must

¹ Here, Clyde alternatively argues that its ordinance relates solely to self-government, and that argument is covered in Proposition of Law No. 2, below (at 26).

- (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 on citizens generally.

AFSA, 2006-Ohio-6043 at ¶ 32. Here, Clyde does not dispute the first, third, or fourth prongs. Clyde argues only that the Concealed Carry Law does not operate uniformly throughout the state.

As explained below, Clyde's uniformity attack is based on a misguided view of what that principle means. The uniformity prong ensures that all cities and geographic regions of the State are governed equally, and it guards against arbitrary and capricious classifications. Under that proper understanding of uniformity, the Concealed Carry Law is uniform, as it treats Clyde just as it does Cleveland, Columbus, and Canton. And to the extent that the law creates other classifications, such as the difference between childcare centers and golf clubs, those classifications are reasonable.

B. Ohio's Concealed Carry Law is uniform because all cities and regions of the State are treated alike, and it does not create arbitrary classifications among them.

The uniformity prong of the *Canton* test requires that general laws must "apply to all parts of the state alike." *Canton*, 2002-Ohio-2005 at ¶ 25. This prong is rooted in the same doctrines underlying Ohio's separate Uniformity Clause of the Constitution, contained in Article II, Section 26. Indeed, the Court has developed the uniformity component of home rule analysis by citing both home rule cases and Uniformity Clause cases, intertwining both. See, e.g., *id.* at ¶ 25, citing *Garcia v. Siffrin Residential Ass'n* (1980), 63 Ohio St.3d 259, 271-272 (reviewing

uniformity under both clauses and finding both a home rule violation and that the statutes there “suffer[ed] an additional infirmity, in that they” violated the Uniformity Clause).²

As *Garcia* and *Canton* both illustrate, the primary purpose of the uniformity principle, in cases that are partly or wholly based on a city’s home rule powers, is to ensure that some cities are not arbitrarily treated differently from other cities. In *Garcia*, the statutes at issue facially discriminated among different types of cities in an arbitrary way. The statutes “create[d] two distinct classes of municipalities”—those that had a certain type of ordinance in effect on June 15, 1977, and those that did not. *Garcia*, 63 Ohio St.2d at 272. The Court found this classification invalid because it was “based on a time requirement which is arbitrary”—the June 15, 1977. deadline. *Id.* The arbitrary deadline created two distinct sets of municipalities, those that had enacted the relevant ordinance at the time and those that had not, and therefore it did not operate uniformly “upon all municipalities.” *Id.* at 273. Moreover, the Court held that the distinction was “unrelated to the accomplishment of its avowed purpose.” *Id.* Regardless, “[t]he arbitrary fixing of a retroactive date, upon which future rights and powers of a municipality depend,” was improper. *Id.*

In *Canton*, the Court looked beyond a law’s facial uniformity and examined the practical effects of a law, and it found that some municipalities would be treated differently from others. The state statute in *Canton* barred municipalities from prohibiting or restricting the location of certain manufactured homes in zones permitting single-family housing. *Canton*, 2002-Ohio-2005 at ¶ 2. The statute also had an exception, however, allowing private landowners to exclude

² Of the three cases cited in *Canton*’s uniformity discussion, one was a home rule case with no separate Uniformity Clause challenge, one was a Uniformity Clause case with no home rule challenge, and one said that both clauses were violated by the non-uniformity of the law at issue. See *Schneiderman v. Sesanstein* (1929), 121 Ohio St. 80, 83 (home rule); *Miller v. Kornis* (1923), 107 Ohio St. 287, 301-06 (Uniformity Clause); *Garcia*, 63 Ohio St.2d at 271-72 (both).

manufactured homes from a development by using restrictive covenants. *Id.* at ¶ 27. The Court noted that the statute was *facially* uniform, as “on its face, the statute and its exception apply to the entire State of Ohio.” *Id.* at ¶ 29. But that facial uniformity was not enough.

Instead, the Court looked at “the practical effect of the legislation,” which was to treat older cities and newer suburbs differently, on a systematic basis. The Court explained that, realistically, only “suburban portions of the state with newer housing developments” could invoke the exemption by using such covenants, *id.* at ¶ 28, so that the law would have “very little, if any, impact in areas of development having effective deed restrictions or active homeowner associations,” *id.* at ¶ 30. Thus, the statute would “effectively apply only in older areas of the state, i.e., cities where residential areas no longer have effective deed restrictions or no longer have active homeowner associations.” *Id.* Ohio’s urban areas ended up being treated differently from suburban municipalities, and this disparate effect undercut the law’s uniformity.

Moreover, the *Canton* Court found that the urban-suburban distinction was unreasonable because it “wholly defeat[ed] the stated purpose [of the legislation],” *id.* at ¶ 26, which was “to encourage placement of affordable manufactured housing units across the state.” *Id.* at ¶ 30. By allowing newer suburbs, as opposed to older cities, to opt out, the cause of affordable housing was not consistently advanced.

To be sure, in both *Canton* and *Garcia*, the Court’s general statement against arbitrariness refers broadly to classification of *citizens*, but in practice, the Court has limited its application of the rule and has invalidated only those laws that arbitrarily treated *cities* differently. As explained above, both *Garcia* and *Canton*—which are the only cases that Clyde cites on this score—involved disparate treatment among cities. The Court also followed this pattern in *Linndale v. State* (1999), 85 Ohio St.3d 52. In *Linndale*, the Court invalidated a state law that

allowed some cities, but not others, to enforce traffic laws within their city limits. The Court said that the law was “not a part of a system of uniform statewide regulation,” because the law said, “in effect, certain cities may not enforce local regulations.” *Id.* at 55. And just recently, the Court expressly rejected a non-uniformity argument by noting that the law at issue treated all *cities* the same, even if it allowed for different outcomes to occur in different places. *Marich v. Bob Bennett Constr. Co.*, 2008-Ohio-92, ¶ 24 (“No such differential application is present here. [The statute] requires all municipalities to” follow the same system).

While the Court has repeatedly invalidated laws that arbitrarily treated cities differently, the State could find no cases—and Clyde has cited none—invalidating a law on the grounds that it classified citizens or other non-city entities in an arbitrary manner. That makes sense, as the essence of a home rule challenge is that a state law trenches on a city’s interests *as a city*, not that a law is generally unfair to this or that group of citizens within Ohio’s cities. And as *Miller* and other cases show, citizens who object to any allegedly arbitrary classifications can raise a plain Uniformity Clause challenge, rather than a home rule challenge that incorporates uniformity principles. That is not to say that the Concealed Carry Law establishes any arbitrary classifications, for, as explained in Part C below, the law’s classifications are reasonable under any approach, whether looking at cities or citizens or golf clubs. Thus, regardless of whether the Court looks to classification of cities specifically, or to classification of citizens more generally, the State should win. But the better course would be for the Court to expressly state what has been implicit in *Canton*, *Garcia*, and *Linndale*—namely, that the uniformity component of home rule analysis, as opposed to uniformity law under the Uniformity Clause, is uniquely centered on the treatment of cities and their powers.

In sum, Clyde's entire attack on the law's uniformity is based on a mistaken theory of what uniformity means in the home rule context. Indeed, Clyde does not even allege that it is treated differently from other cities, either as a facial matter, or as a practical effect, as in *Canton*. Instead, its entire argument hinges on its theory that uniformity requires more than equal treatment among cities, i.e., that uniformity requires equal treatment of different types of land within and across cities. See Clyde Br. at 9. That is, Clyde insists that "just because a statute applies to all municipalities . . . does not necessarily mean a statute operates uniformly throughout the State." *Id.* Thus, because Clyde limits its arguments to contesting this principle, the result is that if the Court confirms, as it should, that equal treatment among cities is enough, then the inquiry ends here, and the Concealed Carry Law should be upheld as a general law that trumps Clyde's attempt to conflict with it.

C. Ohio's Concealed Carry Law is uniform because it establishes reasonable classifications among types of property; it does not create arbitrary classifications.

Even if the Court tests the Concealed Carry Law under a broader uniformity test, and looks beyond equal treatment of cities, the law passes the test. In *Canton* and *Garcia*, the Court set a high hurdle for those attacking state laws as non-uniform, as the Court allowed for a broad range of differential treatment as long as the classifications are not wholly unreasonable. "The requirement of uniform operation . . . 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*, 2002-Ohio-2005 at ¶ 30 (quoting *Garcia*, 63 Ohio St. 3d at 272). Here, the Concealed Carry Law creates reasonable classifications among different types of property, and it does so in service of a statewide licensing system that informs licensees how and where they may exercise their license-based rights. For example, the law forbids guns in all childcare centers and liquor-serving premises, regardless of owners' wishes, while it allows owners'

preferences to control most other types of properties. And an “owner’s choice” principle is indeed a uniform principle of respecting private property, even if it leads to different specific outcomes based on different owners’ wishes. That system gives a licensee fair notice on how to follow the law: you may carry your gun walking on public streets; you may not carry your gun into schools; in areas left to owner’s choice, you should look for a sign barring guns, and if no sign is present, you can carry.

None of Clyde’s examples or arguments undercuts the reasonableness of the General Assembly’s choices, even if Clyde disagrees with the policy choices that the Assembly made. To the contrary, it is Clyde’s position that leads to problems of non-uniformity. If city ordinances override the State’s provisions, then law-abiding gun owners would have to learn not only the state law’s categories, but also every city’s laws. Or, to err on the side of not breaking the law, citizens would have to leave their guns at home, thus eviscerating the Assembly’s decision to allow law-abiding citizens to carry guns for their protection.

- 1. The Concealed Carry Law does not create arbitrary classifications, as it sensibly mandates outcomes for some types of property and reasonably lets owners choose outcomes for all other types of property.**

The Concealed Carry Law does not create any arbitrary classifications in designating where licensees may or may not carry concealed handguns. The law does classify different types of property and adopts different rules for those different categories, but those classifications are perfectly reasonable. As the Court has held, a statute may treat “various classes or types of citizens” differently, without violating *Canton*’s uniformity prong, as long as the classifications are not arbitrary, unreasonable, or capricious. *Canton*, 2002-Ohio-2005 at ¶ 30 (quoting *Garcia*, 63 Ohio St. 2d at 272). The Concealed Carry Law essentially divides property into three broad categories: (1) areas in which licensees may carry guns, (2) areas in which licensees may *not* carry guns, and (3) areas in which private property owners may decide for themselves whether to

allow concealed carry, with the added requirement that owners must post a notice telling licensees that guns are banned. See R.C. 2923.126(A)-(C). These classifications are sensible in two ways: first, it made sense for the Assembly to establish the three groups of “carry,” “no carry,” and “owner’s choice,” and second, the types of property that the Assembly placed in each category are sensible.

First, the Concealed Carry Law starts with the baseline principle that licensed citizens may carry a concealed handgun “anywhere in this state,” subject to the limitations contained in subsections (B) and (C). R.C. 2923.126(A). As detailed below, subsection (B) and (C), respectively, list places that are no-carry or “owner’s choice.” The baseline rule allowing concealed carry is of course not arbitrary, as it reflects the fundamental choice to even have concealed carry. And it makes sense for that category roughly to include the sidewalks, alleys, parking lots, and so on, as those are the places where citizens might need self-defense the most. To criticize this baseline as unreasonable is essentially to attack the entire concealed carry law, but the General Assembly has already settled that debate.

Second, the Concealed Carry Law lists specific places where concealed handguns are never permitted, even if the owners might wish otherwise, such as police stations, childcare centers, and establishments where liquor is served for on-premises consumption. R.C. 2923.126(B). Surely it is reasonable to have such a category, as some places involve either a vulnerable population (e.g., children), or involve a place in which the Assembly thought guns might be more likely to be misused (e.g., bars). Every one of the “no-guns” places has a rational reason behind its inclusion in the list, either because guns might be more dangerous in that setting (e.g., aircraft), or because the need for self-protection is lesser. In some cases, the nature of the place allows for creation of an entire gun-free zone, thus reassuring the licensees that no one else will

have a gun, either—as in courthouses, which are now universally marked by metal detectors. That contrasts with open-air parks, where, as a practical matter, no government can guarantee to law-abiding citizens that no criminals with guns are lurking.

Another common element to most or all places on the no-gun list is that all are either government-operated or government-licensed, and the licensure aspect gives the State a reasonable interest in dictating the terms of the environment, as a condition of maintaining a license. Whether it is a bar, childcare center, or private school, the State already imposes a host of other conditions—such as who may work there, or closing hours, etc.—beyond what it requires for less-regulated businesses, such as a standard retail store. Thus, although some might disagree with the inclusion or exclusion of a particular type of property on the no-gun list, such disagreements do not make the list arbitrary.

Third and finally, for all private property not otherwise specified, the Concealed Carry Law lets private property owners decide whether to allow concealed carry or not, with the requirement that any owner wishing to limit carrying must post a sign notifying citizens of that approach. Otherwise, the default rule is that carrying is allowed. This approach is reasonable at several levels. First, allowing most property owners to decide for themselves respects private property. Indeed, apart from the Concealed Carry Law at issue, property owners traditionally have broad rights to exclude persons from their property based on conditions of what they carry, wear, or otherwise. Allowing guns or disallowing guns is simply part of that larger principle that property owners may control their property, and the State need not (and in some cases, ought not or cannot) tell the owners how to manage their property.

On the other hand, if the State were forced to eliminate the “owner’s choice” category to achieve Clyde’s vision of uniformity, it would have to push every other type of place into the

always-yes or always-no column. Perhaps such a list would forbid guns at banks, jewelry stores, and mini-marts, but allow guns at shoe stores and comic-book shops. Or vice-versa. It would be nearly impossible to draft a comprehensive list that neatly categorizes every known form of retail shop, manufacturing plant, office, and so on. And even if the State could tell all retailers and employers which column they fall in, it would be impossible for a licensee to memorize such a list. In sharp contrast, allowing private property owners to sort themselves out and post a sign telling licensees where they may carry more logically serves the interests of both property owners and those licensed to carry concealed handguns.

Indeed, the Court has already endorsed the principle that a State law remains uniform even if it delegates decisionmaking to a class of decisionmakers, even though the system results in different outcomes based on different decisions. See *Marich v. Bob Bennett Constr. Co.*, 2008-Ohio-92, ¶¶ 21-26. In *Marich*, the statute at issue set statewide rules regarding vehicle sizes on public roads, and the statute also allowed cities to grant permits “for good cause,” thus allowing oversize vehicles on the roads. The Court expressly rejected the argument that the system was non-uniform because different jurisdictions might grant or deny permits differently. *Id.* at ¶ 22. The Court noted that the “basic process is a uniform one,” *id.* at ¶ 24, even if the decisions made within the system would “inherently vary to some degree from jurisdiction to jurisdiction,” *id.* at ¶ 22. Just as the law in *Marich* granted discretionary power to cities while remaining uniform, so, too, does the law here allow for private decisionmaking within a uniform framework.

Taken together, the baseline allowance for concealed carry, combined with the narrow no-gun zones and the owner’s-choice approach for the rest, form a workable and understandable system. And unlike the statute in *Canton*, the exceptions contained in the Concealed Carry Law do not operate to defeat the stated purpose of the law. The Concealed Carry Law is not meant to

permit concealed carry in every venue throughout Ohio; that is why the law contains several exceptions expressly prohibiting concealed handguns at certain locations. The objective of the statute, apart from establishing a uniform set of requirements for licensure, is to provide a framework to inform licensed carriers how they can determine whether concealed carry is permitted on a given piece of property. The law achieves this goal by telling licensees that concealed carry is generally permitted throughout the state, subject to a few specific exceptions, and by allowing private landowners to opt out only if they notify licensees in a conspicuous manner. The law therefore informs the licensee *how to determine* where concealed carry is prohibited—one must simply look for the sign. Thus, the Concealed Carry Law does not create arbitrary, unreasonable, or capricious classifications of landowners. The classifications created are permitted under the *Canton* test, and exist for valid, legitimate purposes. Therefore, the statute operates uniformly throughout the state and meets this prong of the *Canton* test.

2. Clyde's examples do not demonstrate any unreasonable classifications; to the contrary, Clyde's arguments show that its view would lead to an unworkable patchwork of laws that would undermine the statewide scheme.

Despite the reasonableness of the law's classifications, Clyde insists that three types of disparities defeat the law's uniformity. First, Clyde says that even allowing owner's choice *within* the private sector defeats uniformity. That is, it says that allowing one type of business to allow concealed carry, while another otherwise-identical business forbids it, is non-uniform. Second, it says that forbidding cities, as owners, to have the same "owner's choice" that private owners have is non-uniform. Finally, it says that the law irrationally treats seemingly similar places in different ways, such city-owned golf courses (guns allowed), university-owned golf courses (guns banned), and private golf courses (owner's choice). Not only do these objections fail, but they that *Clyde's* view is the one that would lead to an unworkable patchwork of laws.

First, as explained above, allowing owner's choice is a uniform rule, as all private owners have the same right to choose. Here, if allowing private choice renders the law non-uniform, the only logical outcome is that *all* conflicting local ordinances would win the conflict analysis over the Concealed Carry Law. That drastic result would not only invalidate this law, but it would also threaten every other law that allows private citizens to choose their own paths within a broader state scheme. As explained above, even if Clyde insists that its argument is limited to city parks, Clyde cannot deny that its approach logically goes further. A state statute must be uniform to be a general law, and it must be a general law to override conflicting local laws. A finding that a law is not uniform means that it is invalid as against all conflicting municipal ordinances, not merely against those concerning city parks.³

Second, the distinction between public land and private land is not arbitrary. The State does not have the same interests regarding public and private land, as it legitimately may stop short of forcing private landowners to permit persons to carry concealed handguns on their property. The examples that Clyde cites as creating "arbitrary distinctions" are simply distinctions between what a private landowner can prohibit from his or her property and the general law for public property. In enacting the Concealed Carry Law, the General Assembly affirmatively decided to permit properly licensed individuals to carry concealed handguns "anywhere in this state." R.C. 2923.126(A). The law recognizes, however, that private landowners may have an interest, financial or otherwise, in assuring their patrons that concealed

³ Further, the effect of a non-uniformity finding is even greater if the Court mistakenly rejects the State's argument (in Part B above) that uniformity in the home rule context should focus on treatment of cities and should thus be distinct from Uniformity Clause analysis. If the two forms of uniformity are identical, then a finding of non-uniformity in a home rule case would not merely allow a state statute to be easily overridden by cities, but it would also mean that the statute could be wholly invalidated under a follow-up Uniformity Clause challenge, even absent any other conflicting city ordinances.

handguns are not permitted on the premises. Other private landowners may wish to allow their licensee patrons to carry. Nothing about that deference to property rights is arbitrary.

Finally, none of Clyde's examples of particular properties undercuts the above principles. For example, Clyde says that a local employer, Whirlpool Corporation, operates a private park at its plant in Clyde, and as a private property owner, Whirlpool may ban concealed handguns if it wishes. But Whirlpool's situation also reflects that, as the owner of a *private* park, it has many other powers of ownership, too. For example, Whirlpool can limit access to the park to Whirlpool employees and their families. Private entities routinely act in ways that governments cannot, and most important, private owners can restrict access to their property in ways that public bodies do not. The distinction between private and public land is therefore not arbitrary.

In the same vein, nothing is arbitrary about the fact that private golf courses are different from public ones, or college-owned ones. True, private golf clubs can ban concealed handguns, and city golf courses may not, but private clubs also typically restrict the golf course to members, too. That reassures a member who is licensed to carry a handgun, and would carry on the course but for the rule, that all others on the course are similarly disarmed. The city cannot provide the same degree of assurance about disarming all comers, even if a law forbids carrying, as of course people do break laws. Club members might break club rules, too, but someone who has paid membership fees might be less likely to forfeit her participation rights by breaking the club's rules. In any event, the differences between public land and private land are not arbitrary, even if golf courses might exist on both types of property, and thus look superficially similar. Nor is it arbitrary to treat golf course on college campuses differently from private golf courses, as that merely reflects the broader sensible policy choice that campuses are treated differently. Indeed, other establishments located on a campus, such as bookstores, are treated differently from their

non-college counterparts, but that merely reflects the judgment that the college aspect of the locale trumps the golf course or bookstore nature of the local. However one draws property-based categories, it is inevitable that some properties will fall in multiple categories, so lines must be drawn. If that makes the law arbitrary, then no such law is possible, and that cannot be the case.

In sum, the Concealed Carry Law creates reasonable distinctions, not arbitrary ones. Thus, the law is uniform, and in turn, is a general law that supersedes conflicting ordinances.

D. The Concealed Carry Law also satisfies the other three prongs of the *Canton* test.

A brief review shows that the Concealed Carry Law satisfies the remaining three prongs of the *Canton* test, as *Clyde* appears to concede. First, as explained above, the Concealed Carry Law is part of a statewide and comprehensive legislative scheme designed to ensure uniform operation of the law throughout the state. The General Assembly specified its intent to create a comprehensive legislative scheme in Section 9 of H.B. 12:

The General Assembly finds that licenses to carry concealed handguns are a matter of statewide concern and wishes to ensure uniformity throughout the state regarding the qualifications for a person to hold a license to carry a concealed handgun and the authority granted to a person holding a license of that nature.

Ohio's Concealed Carry Law regulates the licensing and carrying of a concealed handgun throughout Ohio, providing both the requirements for licensure and the means for licensees to determine where concealed carry is permitted. Therefore, the first prong of the *Canton* test for "general laws" is satisfied.

Second, the statute affirmatively sets forth police regulations, and does not purport only to limit legislative power of municipalities. In *Canton*, this court stated that statutes limiting municipal authority are permissible if they serve a regulatory interest of the state. *Canton*, 2002-Ohio-2005 at ¶¶ 31-33. The Concealed Carry Law is a comprehensive scheme for licensing and

regulating those Ohioans who wish to carry concealed handguns. A statewide licensing and regulatory scheme is necessary in this instance to establish regulations governing the licensing and carrying of the weapons. Thus, the statute meets the third *Canton* prong.

Third, the Concealed Carry Law prescribes a rule of conduct upon citizens generally; it is not legislation that merely limits municipal authority without regulating citizen behavior. The statute regulates the conduct of Ohioans who wish to carry concealed weapons, and prohibits all Ohioans from doing so without valid licensure. Therefore, the statute meets the fourth and final prong of the *Canton* test as well.

Finally, this is a licensing case, contrary to Clyde's insistence otherwise, and the licensing aspect affects several *Canton* prongs, such as showing that it affects citizen behavior, and showing a statewide concern. The Court has repeatedly upheld statewide permitting and licensing schemes against home rule challenges. See *State ex rel. McElroy v. Akron* (1962) 173 Ohio St. 189; *Ohio Ass'n of Private Detective Agencies, Inc. v. North Olmstead* (1992), 65 Ohio St. 3d 242; *City of Westlake v. Mascot Petroleum Co., Inc.* (1991), 61 Ohio St. 3d 161. In such cases, the Court has explained that "[I]nasmuch as the local ordinance restricts an activity which a state license permits, the ordinance is in conflict with a general law of the state and violates Section 3, Article XVIII of the Ohio Constitution." *Ohio Ass'n of Private Detective Agencies*, 65 Ohio St. 3d at 245. Likewise, *Mascot Petroleum* held that a municipality does not have authority to "extinguish privileges" arising under a valid state permit. *Mascot Petroleum*, 61 Ohio St. 3d at 168.

Moreover, in *Private Detectives* the Court refused to consider a particular statute in isolation, and looked to the legislative scheme as a whole. *Ohio Ass'n of Private Detective Agencies*, 65 Ohio St. 3d at 245 (citing *Youngstown v. Evans* (1929), 121 Ohio St. 342). The

Court noted that the particular statute in question in that case simply put a limit on local regulation, which did not necessarily constitute a general law. *Id.* However, the statutory scheme as a whole “provide[d] for uniform statewide regulation of security personnel,” just that the statutory scheme in *Mascot Petroleum* provided for a statewide scheme governing liquor sales. *Id.* Thus, although R.C. 2923.126 itself does not set up the statewide licensing for concealed carriers, it is part of comprehensive scheme providing for and regulating those licenses. Consequently, the Court can and should look not only at the Assembly’s comprehensive classification of properties where guns may or may not be carried, but it should also look at the entire licensing scheme, such as the training requirements. From that perspective, Clyde’s attempt to restrict the activity of properly licensed individuals conflicts with a general law, and Clyde’s attempt must yield to the state system.

Attorney General's Proposition of Law No. 2:

The regulation of concealed carry is a matter of statewide concern addressed by state legislation, so it is not a power of local self-government protected by the Home Rule Amendment.

Municipal regulations prohibiting Ohioans from carrying concealed handguns are not exercises of local self-government, but are instead exercises of the police power. As noted above, the second step of the three-part *Canton* test asks whether the local regulation “is an exercise of the police power, rather than of local self-government.” *Canton*, 2002-Ohio-2005 at ¶ 9. This stems from the language of the Home Rule Amendment itself, which grants municipalities exclusive power over matters of local self-government but gives priority to state general laws where the municipality is exercising police power. *AFSA*, 2006-Ohio-6043 at ¶ 23, 27; Ohio Const. Art. XVIII, Sec. 3. Clyde Ordinance 2004-41 is an exercise of the police power for two reasons: (1) it does not relate solely to Clyde’s internal administrative affairs, and (2) by infringing on the right to carry concealed handguns, it touches on a matter of statewide concern.

A. The regulation of concealed carry licenses is not an exercise of local self-government because it does not relate to the government and administration of Clyde’s internal affairs.

The regulation of concealed carry licensees is not an exercise of local self-government. “An ordinance created under the power of local self-government must relate ‘solely to the government and administration of the internal affairs of the municipality.’” *Marich*, 2008-Ohio-92, ¶ 11 (quoting *Beachwood v. Bd. of Elections of Cuyahoga Cty.* (1958), 167 Ohio St. 369, 5 O.O.2d 6, ¶ 1 of the syllabus). As described in *Beachwood*, a regulation does not “fall[] within the sphere of local self-government” when it “affects not only the municipality itself but the surrounding territory beyond its boundaries.” *Beachwood*, 167 Ohio St. at 371. In enacting the Concealed Carry Law, the General Assembly created a comprehensive statewide licensing scheme. A regulation prohibiting properly licensed citizens from acting in a manner permitted

by that state license necessarily affects more than Clyde's internal affairs. The ordinance directly infringes on the rights of all Ohioans licensed to carry concealed handguns—rights guaranteed by state law.

Clyde's ordinance prohibiting concealed carry is not simply a "regulation[] governing use of municipal facilities." Clyde Br. at 18. Rather, it is a direct attempt to prohibit concealed handguns on Clyde's property and a logical first step toward prohibiting handguns throughout the city as a whole. In *Beachwood*, the Court emphasized that determining whether an ordinance pertains to a matter of local self-government requires taking into account the "result" of the local legislation. "If the result affects only the municipality itself, with no extraterritorial effects, the subject is clearly within the power of local self-government . . . [but] if the result is not so confined it becomes a matter for the General Assembly." *Id.*; see also *Cleveland Elec. Illuminating Co. v. Painesville* (1968), 15 Ohio St.3d 125, 129. Thus, the question is whether the power to prohibit the carrying of concealed handguns in Clyde's parks relates solely to governing the internal affairs of Clyde, or whether it has other effects. Here, the result of Clyde's ordinance is that properly licensed Ohioans can no longer carry a concealed handgun in areas that their licenses expressly permit them to carry, and therefore the ordinance touches on matters beyond the scope of Clyde's internal affairs.

Regulations prohibiting properly licensed Ohioans from carrying concealed handguns extend well beyond geographical borders and affect citizens throughout the state. The General Assembly expressly provided citizens an opportunity to carry concealed handguns in areas not otherwise restricted by the state law, and that includes city parks. R.C. 2923.126(A). Clyde's attempt to prohibit concealed carry on municipal property is not an act relating to the administration of the city's internal affairs; it is a direct attempt to curb the statutory rights of all

Ohioans. Prohibiting concealed carry on public lands necessarily affects the *entire* public, including individuals outside the reach of Clyde's internal affairs. It not only undercuts a licensee's ability to use her license to the full extent that state law allows, but it also undercuts her ability to even know the law. Nothing about Clyde's position would obligate the city to follow the parts of the law that obligate private property owners to post signs banning guns, so licensees would have to study the ordinances of every city they enter.

Clyde is mistaken in relying on *McDonald v. Columbus* (10th Dist. 1967), 12 Ohio App. 3d 150, for the proposition that the power to provide for city parks, and therefore necessarily the power to "delineate the type of activity that is [allowed]" in those parks, is a matter of local self-government. Clyde Br. at 19. That case dealt with the question of whether the City of Columbus or the county government could dictate whether a city-owned park could operate a camping ground. *McDonald*, 12 Ohio App. 3d at 150. The Tenth District held that the city's exercise of a power of local self-government to provide for the park trumped the county's exercise of police power by way of zoning regulations. *Id.* at 154. That case, however, dealt purely with a question of use of the park; the court found that the power to provide for parks, playgrounds, and other recreational facilities of various uses was a matter of local self-government. *Id.* at 152-53. Nor did *McDonald* deal with a state law expressly licensing individuals to do certain things.

Clyde's ordinance bears no relation to the "use" of specific municipal property or the purposes for which the city established a municipal park. *McDonald* involved the provision of a municipal park for a set purpose: to use as a campground. The power to set aside land for use as a park or other recreational facility, or the power to establish a specific use for that recreational property, is a power of local self-government under *McDonald*. Clyde's ordinance has no such purpose; rather, Clyde's ordinance relates to all municipal property within the city limits,

regardless of its use or intended purpose. The ordinance is not related to the power to provide for municipal parks, and thus is not an exercise of local self-government.

Indeed, Clyde's reliance on cases concerning streets and roads confirms that their argument reaches beyond city parks and would fully undermine the Concealed Carry Law. Clyde cites several old cases for the proposition that the cities control the streets and roads within their jurisdiction. See Clyde Br. at 20, citing cases. First, as the Court has just recently confirmed, many issues of road management are now a statewide issue. See *Marich*, 2008-Ohio-92, ¶¶ 17-20. Second, if Clyde's argument means that roads and streets, like parks, are under the city's exclusive control when it comes to concealed carry rules, then Clyde could ban licensees from exercising their rights as they walk or drive through Clyde. That would have extraterritorial effects, as a practical matter, as someone could not plan a day's driving or walking if their path might take them through cities that restrict concealed carry under their own laws. Thus, Clyde's claim to control its own streets or property effectively extends into other cities' streets and intrudes on a matter of statewide concern.

Consequently, Clyde's attempt to ban concealed carry in its parks is not about managing parks; it is instead an attempt to protect the health and welfare of Clyde's citizenry. Indeed, the Ordinance even states that it was passed under the police power. See Ordinance, App. 18. The ordinance does not relate to one specific piece of land or its intended use; it is a general statute that prohibits conduct throughout the city, at all its parks, in order to eliminate a specific perceived problem. As such, Clyde's ordinance is an exercise of Clyde's local police power. *Marich*, 2008-Ohio-92, at ¶ 11 ("the police power allows municipalities to enact regulations only to protect the public health, safety, or morals, or the general welfare of the public") (citing

Downing v. Cook (1982), 69 Ohio St.2d 149, 150). Therefore, as an exercise of Clyde’s police power, the ordinance cannot stand when it is in conflict with a general state law.

B. Regulation of concealed carry is a matter of statewide concern.

Regulations affecting the right to carry a concealed handgun touch on a matter of statewide concern, and therefore they cannot relate solely to matters of local self-government. Recently in *AFSA*, this Court incorporated the long-recognized doctrine of “statewide concern” into the existing framework of the *Canton* test and specified that the doctrine is relevant in establishing that a matter is not a strictly local concern because circumstances require comprehensive state regulations. *AFSA*, 2006-Ohio-6043 at ¶¶ 29-30. The *AFSA* Court held that courts must consider “whether a comprehensive statutory plan is, in certain circumstances, necessary to promote the safety and welfare of all the citizens of this state.” *Id.* at ¶ 30 (quoting *Kettering v. State Emp. Relations Bd.* (1986), 26 Ohio St. 3d 50, 55). Where the matter at issue addresses a statewide concern, an ordinance touching on that matter is not an exercise of local self-government under Home Rule analysis.

Under this doctrine, “a municipality may not, in the regulation of local matters, infringe on matters of general and statewide concern.” *Reading v. Pub. Util. Comm.*, 109 Ohio St. 3d 193, 2006-Ohio-2181, ¶ 33 (internal quotations omitted). As this Court noted in *AFSA*, the Home Rule Amendment reserves power to the municipalities over *strictly* local matters—the amendment was not meant to “impinge upon matters which are of a state-wide nature or interest.” *AFSA*, 2006-Ohio-6043 at ¶ 30 (quoting *State ex rel. Hackley v. Edmonds* (1948), 150 Ohio St. 203, 212). Over those matters, municipalities can only act through their police powers, and cannot exercise those powers in manner that conflicts with general state laws.

AFSA also recognized that a statement of clear intent by the General Assembly to preempt a field “may be considered to determine whether a matter presents an issue of statewide

concern.” The General Assembly expressed such intent in promulgating Section 9 of H.B. 12, the bill enacting the concealed carry law:

Section 9. The General Assembly finds that licenses to carry concealed handguns are a matter of statewide concern and wishes to ensure uniformity throughout the state regarding the qualifications for a person to hold a license to carry a concealed handgun and the authority granted to a person holding a license of that nature. It is the intent of the General Assembly in [enacting the concealed carry law] to enact laws of a general nature, and, by enacting those laws of a general nature, the state occupies and preempts the field of issuing licenses to carry a concealed handgun and the validity of licenses of that nature. No municipal corporation may adopt or continue in existence any ordinance, and no township may adopt or continue in existence any resolution, that is in conflict with those sections, including, but not limiting to, any ordinance or resolution that attempts to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed.

(Emphasis added). Thus, the General Assembly has expressed a clear intent to preempt local regulation of this issue and to create a comprehensive legislative scheme governing concealed carry.

As the Assembly explained, the licensing and regulating of concealed carry is a matter that requires statewide uniformity and control. The General Assembly has taken upon itself the task of creating a statewide scheme governing concealed carry law, so that Ohioans could understand their rights and responsibilities as they travel throughout the state. Importantly, “travel throughout the state” is a relative concept; it is entirely possible that one can pass through several localities simply by taking a Sunday stroll down Main Street. Without statewide uniformity, a properly licensed citizen would have no idea where and when he would be permitted to carry his concealed handgun. Rather than having to know one uniform set of laws, the license holder would face the near-impossible task of determining each municipality’s unique set of rules and regulations.

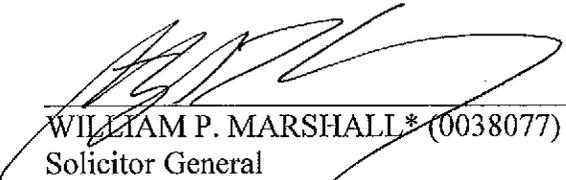
Accordingly, the licensing and regulation of concealed carry requires comprehensive statewide legislation, and therefore it is a matter of statewide concern. Any local restrictions on Ohioan's rights to carry concealed handguns under a valid state license are therefore an exercise of the police power, not an exercise of local self-government.

CONCLUSION

For the above reasons, the Court should uphold the Concealed Carry Law, and it should hold that the conflicting Clyde Ordinance may not be enforced.

Respectfully submitted,

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I certify that a copy of the foregoing Merit Brief of Appellee Ohio Attorney General Marc

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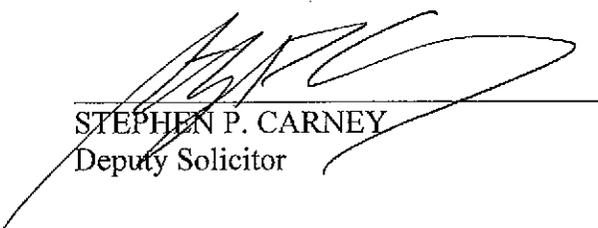
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