

In the  
**Supreme Court of Ohio**

ORIGINAL

CITY OF CLEVELAND,

Plaintiff-Appellee,

v.

STATE OF OHIO,

Defendant-Appellant.

Case No.

09-2280

On Appeal from the  
Cuyahoga County  
Court of Appeals,  
Eighth Appellate District

Court of Appeals Case  
No. 92663

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**MEMORANDUM IN SUPPORT OF JURISDICTION OF  
DEFENDANT-APPELLANT STATE OF OHIO**

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## INTRODUCTION

This case stands at the intersection of several major constitutional issues: the fundamental right of individuals to keep and bear arms; the authority of the General Assembly to enact one uniform, statewide framework governing the possession of firearms; and attempts of individual municipalities to enact firearms limitations beyond that framework. The central question is whether the Home Rule Amendment allows the City of Cleveland to trump a contrary state statute and enact local ordinances governing the possession, sale, and licensing of firearms.

The General Assembly has long regulated gun ownership and possession: who can purchase firearms, where they can be sold and possessed, when they can be discharged, and what punishments are to be doled out for violators. In 2007, as part of a comprehensive revision to those laws, the legislature enacted a provision stating that “a person . . . may own, possess, purchase, sell, transfer, transport, store, or keep any firearm” “[e]xcept as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law.” R.C. 9.68(A). It further provided for the recovery of costs and reasonable attorney fees by plaintiffs who bring successful challenges against a municipal ordinance. R.C. 9.68(B).

The Eighth District in this case invalidated both provisions—the former for violating the Home Rule Amendment of the Ohio Constitution, the latter for violating separation of powers—and its decision strayed so far from well-established precedent that this Court’s review is needed to restore the proper equilibrium between state and local lawmaking. With respect to the prohibition on local firearms ordinances, the appellate court plainly misapplied the general-law test under *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, ¶ 21, for resolving home rule cases. It examined R.C. 9.68(A) in isolation even though the *Canton* test requires that the provision be “interpreted as part of [the] whole” statewide regulatory framework governing firearms. *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, ¶ 27. With respect

to the attorney fees provision, the court held that the General Assembly usurped the authority of the courts to make such awards. Yet, the awarding of attorney fees and costs has never been an inherent power of the judicial branch. Such awards are creatures of statute and, therefore, do not implicate separation-of-powers concerns.

These analytical errors raise substantial constitutional questions. First, the Eighth District's home rule analysis dramatically impairs the General Assembly's authority to legislate on issues of statewide concern. By subjecting only one component (in this case, R.C. 9.68) of a comprehensive statutory plan to the *Canton* test, the appellate court has imposed a considerable and unwarranted burden on the State. It must now show that each particular code section (as opposed to the collection of code sections governing the same subject matter) qualifies as a comprehensive, statewide enactment. Unless corrected, any component of a comprehensive regulatory plan is now subject to challenge under the Home Rule Amendment; a municipality could simply pull out an individual code provision from the comprehensive plan and then attack it as not being compliant with *Canton*.

Second, the Eighth District's separation-of-powers analysis casts a constitutional cloud over dozens of similar fee recovery statutes in the Revised Code. The General Assembly has specified that prevailing parties in many situations—public records requests, consumer protection suits, child support disagreements, and age discrimination claims—are statutorily entitled to reasonable attorney fees and costs. According to the Eighth District, those statutes are all unconstitutional because they remove discretion from the courts to determine whether such costs should be awarded.

Third, these questions are best answered now. Resolution of this case will provide firm guidance to the State, municipalities, and gun owners about the legal status of local firearms

ordinances across Ohio. All parties will have a clear understanding of their responsibilities and duties going forward. By contrast, if the Eighth District's decision is allowed to stand, the confusion—and the litigation—will continue.

For these reasons, the Court should accept review and reverse the decision below.

#### STATEMENT OF THE CASE AND FACTS

**A. The General Assembly enacted R.C. 9.68 to prohibit municipalities from adopting a patchwork of local ordinances regulating the sale and possession of firearms.**

The General Assembly enacted Sub. H.B. 347 (“H.B. 347”) in December 2006. The bill extensively amended and revised Ohio’s firearms laws. The legislature also determined that it “need[ed] to provide uniform laws throughout the state” governing firearms possession. R.C. 9.68(A). It therefore restricted the ability of political subdivisions to enact local firearms ordinances: “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.” *Id.*

The General Assembly preserved three important areas of local control. First, by its terms, R.C. 9.68(A) does not prohibit local ordinances that restrict the discharge of firearms. Second, localities retain authority to “regulate[] or prohibit[] the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for residential or agricultural uses.” R.C. 9.68(D)(1). Third, cities and townships may enact zoning ordinances “that specif[y] the hours of operation or the geographic areas where the commercial sale of firearms, firearms components, or ammunition for firearms may occur.” R.C. 9.68(D)(2).

Finally, the General Assembly provided for the recovery of “costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section.” R.C. 9.68(B).

**B. The City of Cleveland sought a declaration that R.C. 9.68 was unconstitutional.**

The City of Cleveland had adopted a series of ordinances regulating the possession and registration of firearms within its municipal limits. Shortly after H.B. 347 came into force, the City filed suit against the State in common pleas court, seeking a declaration that R.C. 9.68: (1) is an unconstitutional infringement of Cleveland’s home rule powers under Section 3, Article XVIII of the Ohio Constitution; (2) is an abuse of legislative power; and (3) violates the single-subject provision of Section 15(D), Article II of the Ohio Constitution. Following cross motions for summary judgment, the trial court ruled for the State. Citing to *Ohioans for Concealed Carry v. Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, the court found that R.C. 9.68 “does not violate the Home Rule Amendment of the Ohio Constitution” because it “is a general law that is part of a comprehensive statewide legislative enactment.” It further found that the General Assembly did not abuse its legislative power in passing H.B. 347, nor did not violate the single-subject rule.

**C. The court of appeals held that the General Assembly’s enactment of R.C. 9.68 violated home rule and separation of powers.**

The Eighth District reversed, holding that R.C. 9.68(A) violates the Home Rule Amendment because it is not a general law under *Canton*. See *City of Cleveland v. State* (8th Dist.), No. 92663, 2009-Ohio-5968, ¶ 29 (“App. Op.”). The court held that H.B. 347 “leaves a great deal of firearm activity unregulated” and, therefore, is not a statewide comprehensive legislative enactment under *Canton*’s first prong. *Id.* ¶ 19. It further stated that R.C. 9.68(A) fails *Canton*’s third and fourth prongs because it “limits legislative power of municipal corporations” and it “does not prescribe a rule of conduct upon citizens generally.” *Id.* ¶¶ 25, 27.

The Eighth District also found that R.C. 9.68(B) violated separation of powers because it “usurp[s] judicial discretion in the award of attorney’s fees and costs.” *Id.* ¶ 33. The court complained that the law “invites unwarranted litigation and attempts to coerce municipalities into repealing or refusing to enforce longstanding local firearm regulations.” *Id.* ¶ 34.

Two judges concurred only in the judgment, refusing to adopt the authoring judge’s analysis of the constitutional issues. They did not, however, issue separate opinions.

**THIS CASE PRESENTS SUBSTANTIAL CONSTITUTIONAL QUESTIONS  
AND IS OF PUBLIC AND GREAT GENERAL INTEREST**

**A. The Eighth District’s misapplication of the *Canton* test drastically upsets the constitutional balance of power between the State and its municipalities.**

Under the Home Rule Amendment, “[m]unicipalities 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 § 3. This provision defines the relationship between the General Assembly and local legislative bodies: The Amendment is “designed to give the ‘broadest possible powers of self-government in connection with all matters which are *strictly* local,’ but the framers of the amendment did not want to ‘impinge upon matters which are of a state-wide nature or interest.” *Am. Fin. Servs. Ass’n v. Cleveland* (“*AFSA*”), 112 Ohio St. 3d 170, 2006-Ohio-6043, ¶ 30 (citation omitted). And “where matters of statewide concern are at issue, the state retains the power—despite the Home Rule Amendment—to address those matters.” *Id.* ¶ 27.

In *City of Canton*, this Court announced a four-part test for determining when a state law displaces a municipality’s home rule authority: The 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.” 2002-Ohio-2005, ¶ 21.

The Eighth District’s analysis radically altered the *Canton* test. The court examined R.C. 9.68 and H.B. 347 in isolation. This Court has stated, however, “that sections within a Chapter will not be considered in isolation when determining whether a general law exists.” *Mendenhall*, 2008-Ohio-270, ¶ 27. All code sections dealing with the same subject matter “must be read in *pari materia* to determine whether the statute in question is part of a statewide regulation and whether the chapter as a whole prescribes a rule of conduct upon citizens generally.” *Id.*

The Eighth District’s flawed analysis is best shown by its treatment of the first *Canton* prong. The court found that H.B. 347 was not a comprehensive legislative enactment because it “leaves a great deal of firearm activity unrelated”—the discharge of firearms, the possession and sale of assault weapons, the carrying of firearms in public, the possession of firearms by minors, the registration of handguns, and licensure of purchasers and sellers. App. Op. ¶¶ 19-20. This is the wrong inquiry. Instead of asking whether H.B. 347 was *itself* a comprehensive legislative enactment, the Eighth District should have asked whether H.B. 347 was “*part of* [a] comprehensive statewide legislative regulation that relates to all [firearms activities].” *AFSA*, 2006-Ohio-6043, ¶ 33 (emphasis added).

Had it done that, the appellate court would have seen that H.B. 347 is just one component of a comprehensive statewide scheme governing firearms sales, possession, and use. See, e.g., R.C. 1547.69 (transporting or discharging firearm on vessel); R.C. 2909.08 (discharging firearm at aircraft or airport operations); R.C. 2923.121 (possession of firearms in liquor establishment); R.C. 2923.122 (possession of firearms in school zone); R.C. 2923.123 (possession of firearms in courthouse); R.C. 2923.125 (licensing of handguns for concealed-carry permits); R.C. 2923.126

(carrying of concealed handgun in public places); R.C. 2923.13 (possession of firearms by prohibited individuals); R.C. 2923.15 (possession of firearms while intoxicated); R.C. 2923.161 (discharge of firearms in habitation or school zones); R.C. 2923.162 (discharge of firearms in public places); R.C. 2329.20 (furnishing firearms to prohibited persons); R.C. 2329.201 (defacing identification marks on firearms); R.C. 2923.21 (furnishing firearms to minors); R.C. 2923.211 (purchasing of firearms by minors), R.C. 2923.22 (interstate transactions of firearms); R.C. 2923.25 (sale of locking device at time of firearms purchase).

The Eighth District's treatment of the third and fourth prongs of the *Canton* test suffers the same deficiency. The court held that R.C. 9.68 "does not establish police regulations," nor does it "prescribe a rule of conduct upon citizens generally." App. Op. ¶¶ 25, 27. The relevant question, however, is whether R.C. 9.68 is "part of a comprehensive regulatory plan" that establishes police regulations and prescribes a rule of conduct upon citizens generally. *AFSA*, 2006-Ohio-6043, ¶ 35. If so, the plan does not violate the Home Rule Amendment, even if one of its components also "limit[s] [the] legislative power of a municipal corporation to set forth police, sanitary, or similar regulations." *Clyde*, 2008-Ohio-4605, ¶ 50.

By fundamentally altering the *Canton* framework, the Eighth District has shifted the balance of power struck by the Ohio Constitution and this Court's precedents. In any statewide, comprehensive legislative scheme, localities such as the City of Cleveland can identify several objectionable provisions. The appellate court's approach allows municipalities to target discrete provisions in a legislative scheme for a home rule challenge without any consideration of whether the broader legislative scheme "as a whole prescribes a rule of conduct upon citizens generally." *Mendenhall*, 2008-Ohio-270, ¶ 27. Such a radical departure from well-established precedent deserves this Court's immediate attention.

**B. The Eighth District's separation-of-powers analysis casts a constitutional cloud over a number of fee recovery statutes.**

“[I]t is a judicial function to hear and determine a controversy between adverse parties, to ascertain the facts, and applying the law to the facts, to render a final judgment.” *Fairview v. Giffie* (1905), 73 Ohio St. 183, 190. Accordingly, this Court has stated that “the amount of damages” in a particular case “is a question of fact” falling within the purview of the judiciary. *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948, ¶ 74.

The Eighth District has now extended this doctrine to awards of attorney fees and costs. The court held that R.C. 9.68(B), which provides reasonable attorney fees and costs to litigants who prevail in challenging a municipal firearms ordinance, is unconstitutional because it “usurp[s] judicial discretion in the award of attorney’s fees and costs,” and “invites unwarranted litigation.” App. Op. ¶¶ 33-34.

The General Assembly has enacted dozens of similar statutes providing for the mandatory award of attorney fees and costs to certain parties who prevail in litigation. See, e.g., R.C. 149.43(C)(2)(b) (public records); R.C. 163.09(G) (property appropriation); R.C. 169.08(F) (unclaimed funds); R.C. 1305.10(E) (letters of credit); R.C. 1310.06(D) (consumer leases); R.C. 1311.011(B)(3) (home construction and purchase contract liens); R.C. 1345.75(A) (non-conforming motor vehicle law); R.C. 2151.23(G) (child support orders); R.C. 2743.48(F)(2) (wrongful imprisonment); R.C. 3105.18(G) (spousal support orders); R.C. 3501.90(C)(2) (voter harassment claims); R.C. 4112.14(B) (age discrimination suits). These statutes operate in the same manner as R.C. 9.68(B).

The Eighth District has called all these laws into question. Its decision will prompt litigation challenging the constitutionality of fee awards and, therefore, hinder efforts by prevailing parties to collect on those awards. Given the novelty of the appellate court’s ruling

and the consequences of allowing the decision to stand, the Court should accept review of this substantial constitutional question.

**C. The constitutionality of R.C. 9.68 is a matter of public or great general interest for the State, municipalities, and gun owners alike.**

Before R.C. 9.68 took effect, no consistent rules governed firearms possession and sales across Ohio. Each municipality could enact ordinances banning the possession of certain firearms, prohibiting possession of firearms in certain areas, and mandating local registration of firearms. This led to a confusing patchwork of regulations across the State, and gun owners were caught in the middle. For that reason, the General Assembly determined that there was “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.” R.C. 9.68(A).

The current uncertainty over the legitimacy of municipal firearms ordinances creates confusion for thousands of gun owners. Under R.C. 9.68, they are obligated to comply only with the requirements of federal and state law. Yet gun owners in the Eighth District must also heed local ordinances, and they risk criminal penalties for noncompliance. Guidance from this Court will clarify their legal obligations.

Resolution of this case will also benefit the State and its municipalities. Each entity will have a firm understanding of its respective role over firearms regulation going forward, and each entity will forgo further legislative efforts that trench on the province of the other.

The list of amici participating in the Eighth District—the National Rifle Association, six pro-gun control organizations, and seven Ohio municipalities—confirms that the constitutionality of R.C. 9.68 is a question of public and great general interest. A conclusive answer from this Court would benefit all parties.

## ARGUMENT

### The State of Ohio's Proposition of Law No. I:

*Because R.C. 9.68 is part of a comprehensive, statewide legislative scheme that regulates firearms, it is a general law that displaces municipal firearms ordinances.*

Both the General Assembly and the City of Cleveland have sought to regulate firearms—an exercise of police power that “relates to the public health and safety as well as the general welfare of the public.” *Clyde*, 2008-Ohio-4605, ¶ 35. The state law displaces the City’s local ordinances because it satisfies all four prongs of the *Canton* test: (1) it is part of a statewide and comprehensive legislative enactment; (2) it applies to all parts of the state alike and operates uniformly throughout the state; (3) it sets forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation; and (4) it prescribes a rule of conduct upon citizens generally.<sup>1</sup> *Canton*, 2002-Ohio-2005, ¶ 21.

#### **A. R.C. 9.68 is part of a statewide, comprehensive legislative scheme regulating firearms.**

Under *Canton*’s first prong, the challenged statute, R.C. 9.68, must be “part of [a] comprehensive statewide legislative regulation that relates to” firearms possession. *AFSA*, 2006-Ohio-6043, ¶ 33; accord *Mendenhall*, 2008-Ohio-270, ¶ 27. It fits the bill.

R.C. 9.68 is one component of a comprehensive legislative regime governing firearms. The General Assembly has seen fit to regulate where firearms can be possessed, R.C. 1547.69 (vessels), R.C. 2923.121 (liquor establishments), R.C. 2923.122 (school zones), R.C. 2923.123 (courthouses), and where they can be discharged, R.C. 2909.08 (airports), R.C. 2923.16 (motor vehicles), R.C. 2923.161 (habitation areas), R.C. 2923.162 (schoolhouses, churches, dwellings,

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<sup>1</sup> The final step of the home rule analysis “is the conflict test, which asks whether the ordinance prohibits that which the statute permits, or vice versa.” *Clyde*, 2008-Ohio-4605, ¶ 53. The Court need not apply the conflict test here because the City has never asserted a lack of a conflict between its ordinances and R.C. 9.68. Rather, it simply has argued that R.C. 9.68 is not a “general law” under the *Canton* test.

charities, and public roads). State law restricts who can possess and purchase firearms, R.C. 2923.13 (felons and incompetents), R.C. 2923.15 (individuals under the influence), R.C. 2923.211 (minors); it prohibits defacement of identification marks on firearms, R.C. 2923.201; it authorizes interstate firearms transactions, R.C. 2923.22; and it specifies that locking devices shall be offered with all firearms sales, R.C. 2923.25. The General Assembly has also enacted a comprehensive licensing regime for individuals who wish to carry concealed handguns in public, R.C. 2923.12 to R.C. 2923.1213, and this Court affirmed that regime in *Clyde*.

Furthermore, R.C. 9.68 incorporates federal firearms laws into the State's legislative scheme. See *AFSA*, 2006-Ohio-6043, ¶ 33 (holding that statute "was part of comprehensive statewide legislative regulation" because, among other things, it "in effect incorporated parts of" a related federal law). And federal law contains numerous provisions governing the possession of firearms, the use of background checks for firearms purchasers, and the licensing of businesses that sell firearms. See 18 U.S.C. § 921 *et seq.*

To be sure, the majority of these statutory provisions predate the enactment of R.C. 9.68, but that fact is of no relevance. The Court has rejected home rule challenges to limiting statutes, similar to R.C. 9.68, that were attached by the General Assembly to preexisting statutory schemes. For instance, in *Ohio Ass'n of Private Detective Agencies v. City of North Olmsted* (1992), 65 Ohio St. 3d 242, this Court rejected a challenge to new language in R.C. 4749.09 that prohibited local licensing requirements and fees for private investigators. The Court held that "R.C. Chapter 4749 in its entirety does provide for uniform statewide regulation of security personnel." *Id.* at 245 (emphasis added). Therefore, the challenged provision was "a general law of statewide application." *Id.* Similarly, in *Clermont Environmental Reclamation Co. v. Wiederhold* (1982), 2 Ohio St. 3d 44, the Court reviewed an amendment to R.C. Chapter 3734

that prohibited municipal regulation of hazardous waste. The Court stated that the new provision must be interpreted next to “the other sections of R.C. Chapter 3734 dealing with the state’s control of the disposal of hazardous wastes.” *Id.* at 48. It then held that the entire statutory scheme, when “read in pari materia,” “is a comprehensive one.” *Id.*

By every objective measure, the General Assembly has adopted a comprehensive regulatory plan for firearms, and R.C. 9.68 is but one part of that plan. The Eighth District’s contrary analysis rested on its mistaken belief that that State has “[e]ft] a great deal of firearm activity unregulated.” App. Op. ¶ 19. To the contrary, many of the categories identified by the court—“the discharge of firearms,” “the registrations and licensure of firearms dealers,” and “background checks before the purchase or transfer of firearms,” App. Op. ¶ 20—are regulated by either state or federal law.

With respect to the other categories identified by the Eighth District, it is true that state law (1) does not contain more stringent requirements for assault weapons; (2) does not criminalize firearm possession by minors (it criminalizes only purchases); (3) does not require registration of handguns; and (4) does not require licenses for all handgun owners (only for concealed-carry handgun owners). App. Op. ¶ 20. But a state law need not regulate every aspect of a subject matter in order to constitute a “comprehensive” enactment: “There is no requirement that a statute must be devoid of exceptions to remain statewide and comprehensive in effect.” *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, ¶ 20.

When R.C. 9.68 is considered next to the entire statewide regime governing firearms, it clearly satisfies the first prong of *Canton*.

**B. The legislative scheme operates uniformly throughout the State.**

No one disputes that the State’s firearm laws operate uniformly throughout the State, thereby satisfying *Canton*’s second prong. App. Op. ¶ 24.

**C. The legislative scheme is an exercise of the State’s police power.**

Under *Canton*’s third prong, the legislative scheme must do more than “restrict the ability of a municipality to enact legislation.” *AFSA*, 2006-Ohio-6043, ¶ 35. It must “‘set[] forth police, sanity or similar regulations.’” *Id.* (citation omitted).

The Eighth District stated that “R.C. 9.68 does not establish police regulations but instead limits legislative power of municipal corporations.” App. Op. ¶ 25. The appellate court erred, however, by examining R.C. 9.68 in isolation. It should have asked whether the statute, “as part of a comprehensive regulatory plan,” sets forth police regulations. *AFSA*, 2006-Ohio-6043, ¶ 35; accord *Ohio Ass’n of Private Detective Agencies*, 65 Ohio St. 3d at 245 (same).

When the appropriate inquiry is used, the answer is clear. As discussed above, R.C. 9.68 does not exist in a vacuum. The statute incorporates, by reference, all the provisions of “the United States Constitution, Ohio Constitution, state law, [and] federal law” that regulate firearms sales and possession. This comprehensive regulatory plan is a quintessential exercise of the State’s police power. See *Clyde*, 2008-Ohio-4605, ¶ 50. That this scheme also includes a restriction on municipal authority is of no moment. A legislative scheme that is “both an exercise of the state’s police power and an attempt to limit legislative power of a municipal corporation” does not offend *Canton*’s third prong. *Id.* (emphasis added).

**D. The legislative scheme prescribes a rule of conduct upon citizens generally.**

The fourth *Canton* prong requires that the legislative scheme under review “prescribe a rule of conduct upon citizens generally.” 2002-Ohio-2005, ¶ 21.

The Eighth District held that R.C. 9.68 failed this prong because it was simply “‘a limitation upon law making by municipal legislative bodies.’” App. Op. ¶ 27. Again, the appellate court erred by viewing the statute in isolation. As with the previous *Canton* prongs, this fourth prong asks whether R.C. 9.68 “[is] part of a comprehensive and uniform statewide

enactment . . . that prescribes a general rule of conduct.” *AFSA*, 2006-Ohio-6043, ¶ 36; see also *Mendenhall*, 2008-Ohio-270, ¶ 27 (asking “whether the chapter as a whole prescribes a rule of conduct upon citizens generally”). The legislative scheme governing firearms, of which R.C. 9.68 is a part, passes muster. This comprehensive body of laws unquestionably prescribes a rule of conduct for any citizen seeking to possess a firearm.

Because R.C. 9.68 is part of a statewide and comprehensive legislative enactment that uniformly prescribes a rule of conduct upon the citizens of Ohio with respect to the possession of firearms, it is a general law that displaces all municipal firearms ordinances.

### **The State of Ohio’s Proposition of Law No. II:**

*The authorization for awards of attorney fees and costs in R.C. 9.68 does not violate separation of powers.*

Under the separation-of-powers doctrine, “[t]he administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers.” *State v. Hochhausler* (1996), 76 Ohio St. 3d 455, 463-64, (citation omitted). Any attempt by the General Assembly “to limit the inherent powers of the judicial branch of the government” is unconstitutional. *Id.* at 464.

R.C. 9.68(B) provides that “the court shall award costs and reasonable attorney fees” to a litigant who successfully challenges a municipal firearms ordinance. The Eighth District held that this provision violated the separation-of-powers doctrine “by usurping judicial discretion in the award of attorney’s fees and costs” and by “invit[ing] unwarranted litigation.” App. Op. ¶¶ 33-34.

This ruling is unsupportable. The General Assembly’s decision to provide for the award of attorney fees and costs does not implicate any of the judiciary’s inherent powers. Courts of this State do not have inherent authority to award attorney fees or costs to prevailing parties.

Traditionally, each party bears the cost of litigation. See *Wilborn v. Bank One Corp.*, 121 Ohio St. 3d 546, 2009-Ohio-306, ¶ 7 (“Ohio has long adhered to the ‘American rule’ with respect to the recovery of attorney fees: a prevailing party in a civil action may not recover fees as a part of the cost of litigation.”). Furthermore, this Court has long recognized that “any departure from such a deeply-rooted policy . . . is a matter of *legislative concern*.” *Sorin v. Warrensville Hts. School Dist. Bd. of Educ.* (1976), 46 Ohio St. 2d 177, 179-80 (emphasis added).

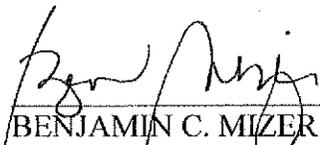
Therefore, the General Assembly acted well within its legislative authority when it authorized the award of attorney fees and costs in R.C. 9.68, just as it has done in many other statutes.

### CONCLUSION

For these reasons, the Court should accept review and reverse the decision below.

Respectfully submitted,

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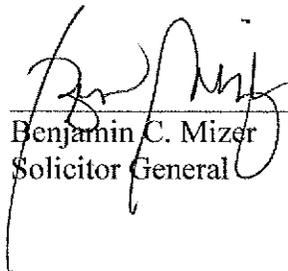
Counsel for Defendant-Appellant  
State of Ohio

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Memorandum in Support of Jurisdiction of Defendant-Appellant State of Ohio was served by U.S. mail this 18<sup>th</sup> day of December, 2009, upon the following counsel:

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Counsel for Plaintiff-Appellee  
City of Cleveland

  
\_\_\_\_\_  
Benjamin C. Mizer  
Solicitor General

# **EXHIBIT 1**



55286163

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

CITY OF CLEVELAND  
Plaintiff

STATE OF OHIO  
Defendant

Case No: CV-07-618492

Judge: TIMOTHY J MCGINTY

JOURNAL ENTRY

96 DISP.OTHER - FINAL

THIS CAUSE CAME FOR CONSIDERATION BEFORE THE COURT ON CROSS MOTIONS FOR SUMMARY JUDGMENT BY PLAINTIFF CITY OF CLEVELAND AND DEFENDANT STATE OF OHIO, FILED JULY 16, 2007 REGARDING PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT SEEKING TO HAVE OHIO REVISED CODE SECTION 9.68 DECLARED UNCONSTITUTIONAL. FOLLOWING BRIEFING ON THIS MATTER, THE COURT RECEIVED NOTICE FROM THE PARTIES REGARDING RELATED PROCEEDINGS PENDING WITH THE SUPREME COURT OF OHIO ON THIS ISSUE. THUS THE COURT HELD ITS RULING PENDING THE SUPREME COURT'S DECISION IN OHIOANS FOR CONCEALED CARRY, INC., ET AL. V. CITY OF CLYDE, ET AL. (2008) 120 OHIO ST.3D 96. THE SUPREME COURT HAVING NOW ISSUED ITS OPINION, THIS COURT HEREBY RENDERS JUDGMENT IN THIS MATTER. THE COURT HEREBY ORDERS PURSUANT TO OHIOANS FOR CONCEALED CARRY, INC., ET AL. V. CITY OF CLYDE, ET AL. (2008) 120 OHIO ST.3D 96, THAT R.C. 9.68 IS CONSTITUTIONAL AND DOES NOT VIOLATE THE HOME RULE AMENDMENT OF THE OHIO CONSTITUTION. THE COURT FINDS THAT R.C. 9.68 IS A GENERAL LAW THAT IS PART OF A COMPREHENSIVE STATEWIDE LEGISLATIVE ENACTMENT BASED ON THE SUPREME COURT'S DECISION IN OHIOANS FOR CONCEALED CARRY. THE SUPREME COURT HAS RECENTLY EXAMINED R.C. 9.68 AND A RELATED CONCEALED CARRY STATUTE AND FOUND THAT R.C. 9.68 IS PART OF A STATEWIDE COMPREHENSIVE LEGISLATIVE ENACTMENT. SPECIFICALLY, THE COURT FOUND THAT "THE GENERAL ASSEMBLY REITERATED THE NEED FOR UNIFORMITY IN R.C. 9.68(A), WHICH REPRESENTS AN ATTEMPT BY THAT BODY TO NULLIFY ALL MUNICIPAL LAWS IMPEDING UNIFORM APPLICATION OF THE STATE STATUTE. . . THE GENERAL ASSEMBLY COULD NOT HAVE BEEN MORE DIRECT IN EXPRESSING ITS INTENT FOR STATEWIDE COMPREHENSIVE HANDGUN-POSSESSION LAWS." OHIOANS FOR CONCEALED CARRY, 120 OHIO ST.3D AT 103. AS A GENERAL LAW THE STATUTE DOES NOT VIOLATE THE HOME RULE AMENDMENT. THE COURT FURTHER FINDS THAT R.C. 9.68 DOES NOT VIOLATE THE SINGLE-SUBJECT RULE AND THAT THE GENERAL ASSEMBLY DID NOT ABUSE ITS LEGISLATIVE POWER IN ENACTING THE STATUTE. THEREFORE, THE COURT, HAVING CONSIDERED ALL THE EVIDENCE AND HAVING CONSTRUED THE EVIDENCE MOST STRONGLY IN FAVOR OF THE NON-MOVING PARTY, FINDS THAT THERE ARE NO GENUINE ISSUES OF MATERIAL FACT AND THAT DEFENDANT STATE OF OHIO IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. PLAINTIFF CITY OF CLEVELAND'S MOTION FOR SUMMARY JUDGMENT IS DENIED AND DEFENDANT STATE OF OHIO'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. FINAL COURT COST ASSESSED TO THE PLAINTIFF(S).

Judge Signature

12/31/2008

- 96  
12/31/2008

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# **EXHIBIT 2**

NOV 23 2009

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 92663

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**CITY OF CLEVELAND**

PLAINTIFF-APPELLANT

vs.

**STATE OF OHIO**

DEFENDANT-APPELLEE

---

**JUDGMENT:  
REVERSED AND REMANDED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-618492

**BEFORE:** Cooney, A.J., Stewart, J., and Dyke, J.

**RELEASED:** November 12, 2009

**JOURNALIZED:** NOV 23 2009

VALD694 880605

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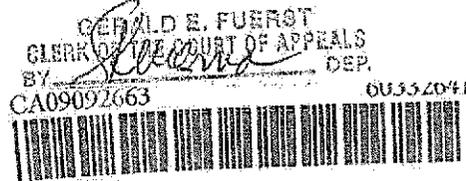
FILED AND JOURNALIZED  
PER APP.R. 22(C)

NOV 23 2009

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY *[Signature]* DEP.

ANNOUNCEMENT OF DECISION  
PER APP.R. 22(B) AND 26(A)  
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

Plaintiff-appellant, the city of Cleveland ("City"), appeals the trial court's grant of summary judgment to defendant-appellee, state of Ohio ("State") on the City's declaratory judgment action. Finding merit to the appeal, we reverse the trial court's grant of summary judgment to the State and direct that the trial court enter summary judgment for the City, thereby declaring R.C. 9.68 unconstitutional.

This case arose in March 2007, when the City filed a complaint for declaratory judgment challenging the constitutionality of R.C. 9.68. The National Rifle Association ("NRA") and Ohioans for Concealed Carry ("OCC") moved to intervene as defendants and to bring cross-claims against the City alleging that local firearm ordinances were unconstitutional.

In July 2007, both the City and the State moved for summary judgment. The trial court denied the NRA's and OCC's motions to intervene, denied the City's motion for summary judgment, and granted the State's motion for summary judgment.<sup>1</sup> The trial court found that based upon the Ohio Supreme Court's holding in *Ohioans for Concealed Carry v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, R.C. 9.68 is constitutional and does not violate

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<sup>1</sup>The NRA and OCC appealed the denial of their motion to intervene in Appeal No. 92735.

the Home Rule Amendment of the Ohio Constitution. The court found that R.C. 9.68 was a "general law that is part of a comprehensive statewide legislative enactment." It also found that Sub.H.B. No. 347 did not violate the single-subject rule and that the General Assembly did not abuse its legislative power in enacting the law.

The City appeals, raising three assignments of error for our review.

Factual and Procedural Background

In December 2006, the Ohio General Assembly passed Sub.H.B. No. 347, entitled "Firearms-Conceal Carry Licenses." The bill addressed 23 statutes, amending 22 concealed carry and concurrent penalty provisions and enacting a new statute, R.C. 9.68, which asserted that only federal or state regulations could limit Ohioans' individual right to bear arms. But at the time, the City had already enacted several ordinances regulating firearms, including Cleveland Codified Ordinance (C.C.O.) 627.08, possession of firearms by minors; C.C.O. 627.09, possessing deadly weapons on public property; C.C.O. 627.10, possessing certain weapons at or about public places; C.C.O. 627A.02, access to firearms, prohibiting children access to firearms; C.C.O. 628.03, unlawful conduct, prohibiting possession and sale of assault weapons; and C.C.O. 674.05, registration of handguns. The Ohio Supreme Court had upheld the

constitutionality of the ordinance dealing with assault weapons. *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, 616 N.E.2d 163.

Law and Analysis

In its first assignment of error, the City claims that the trial court erred in denying its motion for summary judgment and granting summary judgment for the State because R.C. 9.68 violates the Home Rule Amendment of the Ohio Constitution.

We must first observe the strong presumption that all statutes are constitutional. *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶41, citing *State v. Carswell*, 114 Ohio St.3d 210, 2007-Ohio-3723, 871 N.E.2d 547, ¶6, citing *Desenco, Inc. v. Akron* (1999), 84 Ohio St.3d 535, 538, 706 N.E.2d 323. Thus, the City bears the burden to demonstrate beyond a reasonable doubt that R.C. 9.68 is unconstitutional. *Id.*, citing *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110, ¶12; *State v. Williams* (2000), 88 Ohio St.3d 513, 521, 728 N.E.2d 342.

R.C. 9.68 states, in pertinent 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.

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

A. The Home Rule Amendment and “General Laws”

Section 3, Article XVIII of the Ohio Constitution is known as the Home Rule Amendment and states as follows:

“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.”

In short, municipalities may exercise police and other powers so long as they do not conflict with “general laws.” Here, the City seeks a declaratory judgment that R.C. 9.68 is unconstitutional because it is not a general law and attempts to curtail the City’s police powers.<sup>2</sup> The City argues that with Sub.H.B. 347 and its new provision R.C. 9.68, the State did not enact a comprehensive scheme to regulate firearms. The City concedes that Ohio maintains a comprehensive scheme to regulate the *concealed carry* of firearms but not to regulate firearms altogether. The State counters that reading R.C.

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<sup>2</sup> We note that the City challenges the constitutionality of R.C. 9.68 without determining whether it conflicts with any specific City ordinance.

9.68 together with Sub.H.B. No. 347 demonstrates a comprehensive scheme to regulate firearms. We find the City's argument more persuasive.

We begin our analysis with a definition of the term "general law." A general law 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) establish "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." *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus, ("the *Canton* test").

In *Clyde*, the Ohio Supreme Court recently considered the OCC's home-rule challenge to the city of Clyde's ("Clyde") ordinance banning deadly weapons in city parks, alleging that it conflicted with a general law created in H.B. 12, which created a licensing system for the carrying of concealed handguns. In that case, the Ohio Supreme Court examined R.C. 2923.126(A), which provides that a licensed handgun owner "may carry a concealed handgun anywhere in this state," except as provided in R.C. 2923.126(B) and (C). The bill contained an uncodified section stating, "[n]o municipal corporation may adopt or continue in existence any ordinance \* \* \* that attempts to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun

concealed.” H.B. 12, Section 9, 150 Ohio Laws, Part II, 3390; *Clyde* at ¶17. Soon after, the city of Clyde enacted an ordinance forbidding individuals from possessing deadly weapons in city parks, regardless of whether the individual had a permit to carry a concealed weapon. The Ohio Supreme Court invalidated the Clyde ordinance, holding that although it was an exercise of Clyde's police powers, it conflicted with R.C. 2923.126(A), a general law.

In reaching its conclusion, the *Clyde* court reasoned first that R.C. 2923.126 was part of a comprehensive and statewide legislative enactment because along with R.C. 2923.125, it “create[d] a right subject to specifically enumerated exceptions and, where selected by an owner, exceptions based on private property and employment. The General Assembly, in crafting the statute, indicated that it ‘wish[ed] to ensure uniformity throughout the state regarding \* \* \* the authority granted to a person holding a license of that nature.” Id., quoting Am.Sub.H.B. No. 12, Section 9, 150 Ohio Laws, Part II, 3390. Next, it held that the statute applied uniformly statewide, because its rules and exceptions applied evenly to all municipalities of the state. Third, it was an exercise of the state's police power because it “relates to public health and safety as well as the general welfare of the public.” Id., quoting *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92, 880 N.E.2d 906, ¶14.

As to the third prong, the *Clyde* court explained:

"The statute \* \* \* does more than merely prevent municipalities from enacting inconsistent handgun laws. It provides a program to foster proper, legal handgun ownership in this state. The statute therefore represents both an exercise of the state's police power and an attempt to limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations."

Finally, it prescribed a rule of conduct for citizens because it required citizens who sought to carry concealed weapons to comply with the licensing procedure.

Notably, soon after the OCC brought its challenge to the Clyde ordinance and before the Ohio Supreme Court's decision in *Clyde*, the General Assembly enacted Sub.H.B. No. 347, which included R.C. 9.68. *Clyde* at ¶20. The *Clyde* court did not hold that R.C. 9.68 was a general law,<sup>3</sup> though it acknowledged that R.C. 9.68 demonstrated the General Assembly's intent to occupy the field of handgun possession in Ohio. It cautioned that "[a] statement by the General Assembly of its intent to preempt a field of legislation is a statement of legislative intent' that may be considered in a home-rule analysis but does not dispose of the issue." *Id.*, quoting *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶31 ("AFSA").

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<sup>3</sup>We note that the *Clyde* court impliedly upheld R.C. 9.68 as it relates to handguns, albeit in dicta, when it stated, "[s]imply put, the General Assembly, by enacting R.C. 9.68(A), gave persons in Ohio the right to carry a handgun unless federal or state law prohibits them from doing so. A municipal ordinance cannot infringe on that broad statutory right." *Id.* at ¶20. But in *Clyde*, neither party had challenged the constitutionality of R.C. 9.68 and its broad preemption of any municipal ordinance.

The City's constitutional challenge to R.C. 9.68 is not directed at the State's concealed carry laws. Instead, it challenges the State's attempt to use R.C. 9.68 as a mechanism to preempt all local ordinances, notwithstanding the absence of conflict between the City's local ordinances and a corresponding general law enacted by the State.

To evaluate whether R.C. 9.68 is a general law, we consider it in the context of Sub.H.B. No. 347. See, e.g., *AFSA* (considering R.C. 1.63 in the context of Sub.H.B. 386 in a home-rule challenge).

(1) Statewide and Comprehensive Legislative Enactment

Turning to the first prong of the *Canton* test, we conclude that R.C. 9.68 is not part of a statewide and comprehensive legislative enactment. Although Sub.H.B. No. 347 pertains to a matter of statewide concern, it is not comprehensive, but leaves a great deal of firearm activity unregulated. Sub.H.B. No. 347 includes amendments that: (1) regulate various aspects of concealed handgun possession and firearms training programs; (2) broaden the definition of "peace officers," enhancing statutory penalties for assault, felonious assault, aggravated assault; (3) enhance the statutory penalty for theft of a firearm; (4) exempt certain individuals from the prohibition against possession of firearms in liquor permit premises; (5) modify the prohibitions against illegal conveyances or possession of deadly weapons or dangerous ordnances in school

safety zones and courthouses; and (6) modify the rules regarding transport of loaded weapons in motor vehicles.<sup>4</sup>

But Sub.H.B. No. 347 leaves unregulated: (1) the discharge of firearms, (2) the possession and sale of assault weapons, (3) the open carry of firearms on public property and public places, (4) the possession and use of firearms by minors, (5) the registration of handguns as required by the City, (6) the registrations and licensure of firearms dealers, (7) permit or licensing requirements before an individual purchases a handgun, and (8) background checks before the purchase or transfer of firearms.

Even the "intent to preempt" language contained in R.C. 9.68 fails to cover a broad range of firearm activity. It refers to the rights to "own, possess, purchase, sell, transfer, transport, store, or keep any firearm," but does not address discharging firearms or openly carrying them.

The instant case is similar to *Canton*, in which the Ohio Supreme Court struck down R.C. 3781.184, a statute barring local governments from prohibiting the location of certain manufactured homes in areas zoned for single-family homes. The *Canton* court held that the statute was not part of a statewide and

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<sup>4</sup>Sub.H.B. No. 347 describes itself as revising laws regarding possession of concealed handguns, broadening the definition of "peace officers," exempting certain individuals from firearms training programs, increasing the penalty for theft of a firearm in certain cases, and augmenting individual rights to own and use firearms.

comprehensive zoning plan because the law was part of a chapter varying widely in topic and lacked rules regarding zoning plans. *Id.* at ¶23-24.

In contrast, in *AFSA*, the Ohio Supreme Court held that Sub.H.B. 386, which regulated lending practices, was a comprehensive law. It reasoned that Sub.H.B. 386 (1) “incorporated parts of the Home Ownership and Equity Protection Act of 1994, \* \* \* the federal predatory-lending law,” into the Ohio Revised Code at R.C. 1349.25 through 1349.37, (2) defined covered loans through R.C. 1349.25(D), and (3) “authorized the state to ‘solely \* \* \* regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in the state and the manner in which any such business is conducted, \* \* \* in lieu of all other regulation of such activities by any municipal corporation or other political subdivision,’ R.C. 1.63(A). (Emphasis added.)”

(2) Uniform Operation Throughout the State

It is undisputed that R.C. 9.68 meets the second prong of *Canton*. It applies to all parts of the state and operates uniformly to every individual.

(3) Establishing Police Regulations Rather than Granting or Limiting Legislative Power

Under the third prong of the *Canton* test, a general law must set forth police, sanitary, or similar regulations rather than simply granting or limiting legislative power. In the instant case, R.C. 9.68 does not establish police regulations but instead limits legislative power of municipal corporations, thus

failing to meet the third prong of the *Canton* test. Our reasoning on this prong closely follows that of the first prong of *Canton*. With R.C. 9.68, the State attempts to curtail the City's home-rule police powers without enacting legislation to remedy the purported ill of a confusing "patchwork" of municipal regulations involving firearms. As outlined above, R.C. 9.68 and Sub.H.B. No. 347, along with existing state and federal firearm regulations, leave many gaps. In her concurring opinion in *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, 859 N.E.2d 514,<sup>5</sup> Justice O'Connor stated:

"Ohio legislation currently touches on only a handful of areas in regard to firearms: Prohibition on ownership of certain items, prohibition on possession of firearms by certain classes of persons, limitations on the discharge and transport of firearms, limits on places where a firearm may be discharged or possessed, sentencing rules and specifications applied when a firearm is used or possessed during commission of a crime, limitations on interstate sales, concealed-firearm provisions, and various laws related to things such as immunity for firearm manufacturers.

\* \* \*

"Although this may appear to be a broad array of firearms regulation, in comparison to other states, Ohio has barely touched upon the subject of firearm possession, use, transfer, and ownership."

As outlined above, Sub.H.B. No. 347 did little to fill in the gaps that Justice O'Connor recognized. Thus, R.C. 9.68 fails the third prong of *Canton*.

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<sup>5</sup>*Baskin* was decided the same year Sub.H.B. No. 347 was enacted.

(4) Prescription of a Rule of Conduct for Citizens

Finally, R.C. 9.68 does not prescribe a rule of conduct upon citizens generally. Like the challenged laws in *Canton*, supra, *Linndale v. State* (1999), 85 Ohio St.3d 52, 706 N.E.2d 1227, and *Youngstown v. Evans* (1929), 121 Ohio St. 342, 168 N.E. 844, R.C. 9.68 is “not a general law in the sense of prescribing a rule of conduct upon citizens generally. It is a limitation upon law making by municipal legislative bodies.” *Canton* at ¶34, quoting *Youngstown*. We distinguish this case from *AFSA*, which held that Sub.H.B. 386, a provision similar to R.C. 9.68 and Sub.H.B. No. 347, prescribed a rule of conduct upon citizens because Sub.H.B. 386 “establishe[d] rules of conduct for all lenders in Ohio and also provide[d] remedies for all consumers subject to predatory loans if lenders violato[d] the state statute.” *AFSA* at ¶36. Instead, the instant case is analogous to *Linndale* and *Youngstown*.

Accordingly, R.C. 9.68 fails to satisfy the general law test, and we conclude that it is not a general law.

Because R.C. 9.68 unconstitutionally attempts to limit municipalities' home-rule police powers, we find that the trial court erred in denying the City's motion for summary judgment.

The first assignment of error is sustained.

General Assembly's Abuse of Legislative Power

In the second assignment of error, the City claims that the trial court erred in finding that the General Assembly did not abuse its legislative power in enacting R.C. 9.68.

Section 32, Article II of the Ohio Constitution precludes the legislature from violating the separation of powers by exercising judicial powers. In *State v. Hochhausler* (1996), 76 Ohio St.3d 455, 668 N.E.2d 457, the Ohio Supreme Court explained:

"The principle of separation of powers is embedded in the constitutional framework of our state government. The Ohio Constitution applies the principle in defining the nature and scope of powers designated to the three branches of the government. *State v. Warner* (1990), 55 Ohio St.3d 31, 43-44, 564 N.E.2d 18, 31. See *State v. Harmon* (1877), 31 Ohio St. 250, 258. It is inherent in our theory of government 'that each of the three grand divisions of the government, must be protected from the encroachments of the others, so far that its integrity and independence may be preserved. \* \* \* *S. Euclid v. Jemison* (1986), 28 Ohio St.3d 157, 159, 28 OBR 250, 252, 503 N.E.2d 136, 138, quoting *Fairview v. Giffie* (1905), 73 Ohio St. 183, 187, 76 N.E. 865, 866.

\* \* \*

"We have held that '[t]he administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers.' *State ex rel. Johnston v. Taulbee* (1981), 66 Ohio St.2d 417, 20 O.O.3d 361, 423 N.E.2d 80, paragraph one of the syllabus. We have also held that '[c]ourts of general jurisdiction, whether named in the Constitution or established pursuant to the provisions thereof, possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches

of the government.’ (Citations omitted.) *Id.* at paragraph two of the syllabus.

“The legislative branch has no right to limit the inherent powers of the judicial branch of the government. *Hale v. State* (1896), 55 Ohio St. 210, 212-213, 45 N.E. 199, 200.”

R.C. 9.68(B) is offensive for two reasons. First, it violates the separation of powers by usurping judicial discretion in the award of attorney’s fees and costs. R.C. 9.68(B) mandates that courts award costs and “reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section.”

Second, the General Assembly invites unwarranted litigation and attempts to coerce municipalities into repealing or refusing to enforce longstanding local firearm regulations using the significant burden of financial litigation penalties.<sup>6</sup> The conflict analysis is complex, as even the Ohio Supreme Court has recognized. *Baskin* at ¶31 (O’Connor, J., concurring in judgment only). Therefore, municipalities face a grave challenge in complying with this law—they must negotiate the complex conflict analysis while avoiding a minefield of potential litigation that they would have to finance.

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<sup>6</sup>The Ohio Supreme Court recently upheld the State’s valid interest in preserving the financial soundness of its political subdivisions. See *Oliver v. Cleveland Indians Baseball Co. Ltd. Partnership*, Slip Opinion No. 2009-Ohio-5080, ¶10.

Based on the foregoing, we find that R.C. 9.68 violates the separation-of-powers doctrine espoused by the Ohio Constitution. Accordingly, the second assignment of error is sustained.

Single-Subject Rule

In the third assignment of error, the City further asserts that Sub.H.B. No. 347 and R.C. 9.68 violate the one-subject rule. We need not reach this issue because our disposition of the first two assignments of error renders this argument moot.

Judgment is reversed. The case is remanded for entry of summary judgment for the City.

It is ordered that appellant recover of said appellee costs herein taxed.

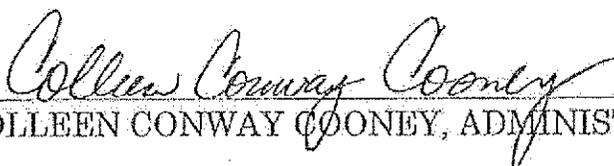
The court finds there were reasonable grounds for this appeal.

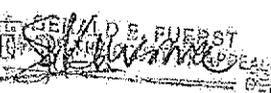
It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FILED AND JOURNALIZED  
PER APP.R. 22(C)

NOV 23 2009

  
COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

JUDGE MADE FURST  
BY 

MELODY J. STEWART, J., CONCURS IN JUDGMENT ONLY;  
ANN DYKE, J., CONCURS IN JUDGMENT ONLY