

ORIGINAL

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND,)	Case No. 2009-2280
)	
Plaintiff-Appellee)	
)	On Appeal from the Cuyahoga
vs.)	County Court of Appeals,
)	Eighth Appellate District
STATE OF OHIO)	
)	
Defendant-Appellant)	Court of Appeals
)	Case No. CA-09-092663

APPELLEE CITY OF CLEVELAND'S MEMORANDUM IN RESPONSE TO APPELLANTS' MEMORANDA IN SUPPORT OF JURISDICTION

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I. APPELLEE'S POSITION STATEMENT

- A. While the State's attempted preemption of established home rule authority is unconstitutional and touches on matters of public and great general interest, it is manifestly evident that the Eighth District Court of Appeals correctly found the General Assembly's attempt to extinguish local police authority through enactment of R.C. 9.68 to be unconstitutional.**

The Home Rule Amendment of the Ohio Constitution, Article XVIII, Section 3, enacted in 1912 provides that:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such police, sanitary and other regulations, as are not in conflict with general laws.”

The power of home rule, “expressly conferred upon municipalities,” cannot be withdrawn by the General Assembly. *Fondessy Ents., Inc. v. Oregon* (1986), 23 Ohio St.3d 213, 215. Local authority to legislate is grounded in the Constitution, not the General Assembly, with “section 3, art. 18, [being] as complete a grant of power as the General Assembly has received in section 1, Art. 2.” *State ex rel. Zielonka v. Carrel* (1919), 99 Ohio St. 220, 227. It has been long recognized that the State and municipalities can exercise “the same police power.” *Greenburg v. Cleveland* (1918), 98 Ohio St. 282, 286.

The City of Cleveland (“City”) filed a declaratory judgment action challenging the constitutionality of R.C. 9.68 because the General Assembly’s intent to withdraw well established local legislative authority to regulate in the field of firearms in the absence of conflict between the City’s ordinances and any general law violated Ohio’s Home Rule Amendment and placed the City’s residents citizens at risk.

The Eighth District Court of Appeals correctly framed the issues as follows:

[M]unicipalities 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.^{FN2} 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. 9.68 together with Sub.H.B. No. 347 demonstrates a comprehensive scheme to regulate firearms. We find the City's argument more persuasive.

FN2. We note that the City challenges the constitutionality of R.C. 9.68 without determining whether it conflicts with any specific City ordinance.

Cleveland v. State, 8th Dist No. 92663, 2009 -Ohio- 5968, ¶ 10¹ The State argues preemption, as below, claiming that with R.C. 9.68 the General Assembly has “restricted the ability of political subdivisions to enact local firearm ordinances.”² It is of note that only one week before the General Assembly enacted R.C. 9.68 with passage of Sub. H.B. 347, this Court in *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422 again recognized the requisite test for determining whether a local ordinance is displaced by state statute as follows:

“A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.”

Id. at ¶¶ 9-10, citing *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005.

More recently, this Court's analysis in *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008 -Ohio- 4605 made clear that even after Sub. H.B. 347 and the enactment of R.C. 9.68 that the General Assembly's expressed intent to occupy

¹ The City cites to the Eighth District's opinion (“*Cleveland v. State*”) as reported. A copy of the Court's actual Journal Entry and Opinion as released was attached as Exhibit 2 to the Appellant's jurisdictional memorandum,

² State's Jurisdictional Memorandum (“SJM”) at p. 3. See also SJM at p. 10 “The State law displaces the City's local ordinances...”

the field of handgun possession³ “does not trump the constitutional authority of municipalities to enact legislation pursuant to the Home Rule Amendment, provided that the local legislation is not in conflict with general laws.” *Id.* at ¶ 29. *Clyde* does not stand for the proposition that R.C. 9.68 preempts all local firearm laws, rather the decision incorporated the traditional *Canton* conflict analysis, with the Court proceeding to determine the firearm statute at issue constituted a general law before finding any conflict whether analysis. The Court employed the *Canton* general law test:

We next consider whether R.C. 2923.126 is a general law. As we have stated, to be a general law, “ ‘a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.’ ” *Clyde* at ¶ 38 citing *Am. Fin. Servs. Assn.*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 32, quoting *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus.

Clyde, supra at ¶ 38. The Eighth District recognized *Clyde*’s further direction with regard to considering legislative intent in any home-rule analysis 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*”).

Cleveland v. State, at ¶ 16. Preemptive legislative intent does not overrule local home-rule authority.

In seeking jurisdiction the State primarily argues that the Eighth District misapplied the *Canton* general law test. In so arguing the State defines the “central

³ Handguns are but a subset of firearms and the Court’s reasoning would be even more appropriate in the present larger context of the State’s claimed preemptive authority over established home-rule.

question” presented to this Court as “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.” (SJM at p.1). Implicit in such “question” is the incorrect presumption that the General Assembly has authority under the Ohio Constitution to abolish local legislative authority in the absence of local conflict with a general law. That the State raises such question in this context disregards the very *Canton* general law analysis undertaken in *Clyde* after the enactment of R.C. 9.68.

The Eighth District Court of Appeals correctly considered whether R.C. 9.68 constituted a general law by following the same *Canton* general law analysis followed by this Court in *Clyde*. The Eighth District did not radically alter *Canton* as argued by the State in determining whether R.C. 9.68 was constitutional and constituted a general law. The Eighth District properly noted at ¶¶ 17-18 of its opinion that:

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).

In evaluating R.C. 9.68 in conformance with the *Canton* general law requirements the Eighth District concluded at ¶ 19 “[a]lthough 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.” That Sub. H.B. 347 was not a comprehensive reformation of Ohio’s statewide firearm laws and added little beyond what already existed is shown by the

State's own summary description to the Eighth District in this matter wherein it described the 22 amendments contained therein as follows:

In addition to the enactment of R.C. 9.68, Sub. H.B. 347 also introduced comprehensive amendments to Ohio's statutory scheme for the licensing to carry a concealed handgun, the issuance of such licenses, criminal penalties for violations thereunder, increased penalties for theft of firearms in certain circumstances, and an expanded definition of peace officers. ("Brief of Appellee State of Ohio", pages 6-7).

With the exception of the newly adopted R.C. 9.68, every statute otherwise amended by Sub. H.B. 347 preexisted the December 2006 *Cincinnati v. Baskin* decision. In analyzing the issues presented in *Baskin* Justice O'Connor's conducted an exhaustive review of existing Ohio firearm laws that is incorporated into her concurring opinion. (Id. ¶¶ 27-59). It is instructive that after identifying and cataloguing the various State firearm laws (See ¶ 52) that were in existence (before Sub. H.B. 347) Justice O'Connor thereafter concluded in ¶ 53 of her opinion that:

"[a]lthough 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.

* * *

Municipalities have been left to fill in the gaps left by Ohio law regarding possession, transfer, and use of firearms to such a degree that I cannot say that the legislature intended to occupy the field of firearms regulation.

The Eighth District appropriately considered the State's scheme of firearm laws existing at the time of *Baskin* decision and after in light of the State's continuing argument that with passage of Sub. H.B. 347 Ohio had now established a comprehensive statewide regulatory plan for firearms that displaced local authority. The Eighth District did not consider R.C. 9.68 and the balance of amendments contained in Sub. H.B. 347 in "isolation" as has been argued by the State, but rather the court found in considering the actual scope of the State's laws that R.C. 9.68 and the amendments to existing laws

contained in Sub. H.B. 347 “did little to fill in the gaps” recognized in Justice O’Connor’s *Baskin* concurrence. *Cleveland v. State* at ¶ 26.

The importance of the City’s argument that it has continuing authority under the Home Rule Amendment to regulate in the field of firearms is not singularly rooted in constitutional theory, but is further evidenced by this Court’s earlier recognition in upholding the constitutionality of the City’s ban on assault weapons that the City’s “[l]egislative concern for public safety is not only a proper police power objective – it is a mandate.” *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, 47. It is well understood that “[l]ocal authorities are presumed to be familiar with local conditions and to know the needs of the community.” *Allion v. Toledo* (1919), 99 Ohio St. 416, syllabus. Inexplicably, with R.C. 9.68 the State seeks to preempt the City’s mandated legislative concern for public safety in regulating firearms by preventing the City and other municipalities from addressing their local conditions by filling the “gaps” still left by Ohio’s firearm laws.

The State cites *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92 to argue that the State need not regulate every aspect of a subject matter in order for a law to constitute a ‘comprehensive’ enactment. (SJM at p. 12). *Marich* offers little support to the State as the issue therein did not involve outright State preemption of existing home rule authority in the absence of local ordinances being in conflict with general laws as herein. *Marich* addressed the issue of whether a statutory scheme was “comprehensive” in a much more limited and different context. The issue arose as to whether the existence of certain vehicle exceptions identified in the statute (e.g. fire engines, pole trucks, farm equipment) that otherwise established the allowable

dimensions for vehicles travelling on public highways worked to prevent R.C. Chapter 5577 and related permit sections from being considered statewide and comprehensive pieces of legislation. See *Marich* at ¶¶18 -20.

A more appropriate definition for the term “comprehensive” where, as herein, the State “has barely touched upon the subject of firearm possession, use, transfer, and ownership”, was addressed in *Dayton v. State of Ohio*, 157 Ohio App.3d 736, 2004-Ohio-3141. The *Dayton* court, while recognizing that “comprehensive” did not mean perfect, found the term to mean “covering a matter under consideration, completely accounting for or comprehending all or virtually all pertinent considerations.” *Id.* at ¶ 89, citing Webster's Third New International Dictionary (1981) at 467. R.C. 9.68 and the State's existing firearm laws do not meet such definition.

The State badly misconstrues the Eighth District's incorporation of the traditional *Canton* analysis in arguing at page 2 of its jurisdictional memorandum that 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.”

One only has to again read the home-rule analysis used in *Clyde*, and thereafter substitute “R.C. 2923.126” for the State's above parenthetical reference to R.C. 9.68 to understand the fallacy of the State's “comprehensive statutory plan” and “unwarranted burden” argument.

In light of the Eighth District's recognition of *Clyde* in analyzing R.C. 9.68, the more recent concurring opinion of Justice O'Donnell to *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2597 is of great significance in further considering the unsupportable

nature of the State's attempt to justify preemption of the long-standing local authority flowing to the City directly from Article XVIII, Section 3 of the Ohio Constitution. A majority of this Court recognized with Justice O'Donnell's concurring opinion that with the *Clyde* decision this Court had reaffirmed traditional home rule analysis and that despite claims to the contrary constitutional home rule authority retained its vitality in Ohio:

“Nothing in *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, suggests anything unusual about future home-rule cases. In *Clyde*, we applied our widely recognized, three-step home-rule analysis and concluded that the city's ordinance, banning concealed handguns in city parks, was unconstitutional because it constituted an exercise of police power that conflicted with a general state law. *Id.* at ¶ 1.

Moreover, despite any claims to the contrary, we have applied the same three-step home-rule analysis utilized in *Clyde* to uphold the valid exercise of home-rule authority by municipalities. See, e.g., *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, syllabus (“An Ohio municipality does not exceed its home rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations”); *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (holding that portions of R.C. 3781.184 were not “general laws” and therefore violated the Home Rule Amendment when they prevented political subdivisions from prohibiting or restricting the location of manufactured homes in any zone or district in which a single-family home is permitted, but permitted private landowners to incorporate such prohibitions in restrictive covenants). Thus, despite claims to the contrary, constitutional home-rule authority retains its vitality in Ohio.”

Id. at ¶¶ 21-22

The State's contrary argument that the Eighth District misapplied the *Canton* test and “strayed so far from well established precedent that this Court's review is needed to restore the proper equilibrium between state and local lawmaking” (SJM at p. 1) disregards the obvious, that the Eighth District strictly adhered to the home-rule

principles established by this Court in holding R.C. 9.68 is not a general law and that the attempt to preempt local firearm regulations in the absence of any conflict with general law is unconstitutional. This Court should allow the Eighth District's judgment to stand.

B. The judiciary and not the General Assembly is the conclusive authority on constitutional questions. The municipal regulation of firearms in the absence of conflict with a general law does not violate the Ohio Constitution and the Eighth District properly held that R.C. 9.68 violates the separation of powers doctrine espoused by the Ohio Constitution.

The General Assembly attempts to justify its attempted preemption of local home rule authority with its enactment of R.C. 9.68 by recognizing therein the existence of fundamental and constitutionally protected rights. It is long decided and well understood in Ohio that the judiciary and not the General Assembly is the conclusive authority on constitutional questions. *Cincinnati, Wilmington & Zanesville RR. Co. v. Comms. of Clinton Cty.* (1852), 1 Ohio St. 77; see also *State ex rel. Shkurti v. Withrow*, (1987), 32 Ohio St. 3d 424. "The power and duty of the judiciary to determine the constitutionality and, therefore, the validity of the acts of the other branches of government have been firmly established as an essential feature of the Ohio system of separation of powers. See, e.g., *Beagle v. Walden* (1997), 78 Ohio St.3d 59, 62, 676 N.E.2d 506, 508.

The General Assembly with R.C. 9.68 attempts to preempt local legislative authority to regulate firearms. The Eighth District has correctly found that R.C. 9.68 is not a general law and unconstitutionally attempts to limit municipal home rule authority. The Ohio Supreme Court has over the years established that reasonable municipal firearm regulations fall within the recognized ambit of a municipality's home rule police power under the Ohio Constitution. See e.g. *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35 (Cleveland Ordinance prohibiting the possession and sale of 'assault weapons' in the City

of Cleveland held to be a proper exercise of the police power under Section 3, Article XVIII of the Ohio Constitution and not in violation of Section 4, Article I); *Mosher v. Dayton* (1976), 48 Ohio St.2d 243 (upheld the constitutionality of a municipal ordinance requiring identification card issued by the city to possess and acquiring handguns); *City of University Heights v. O'Leary* (1981), 68 Ohio St.2d 130 (upheld municipal ordinance requiring firearm owner's identification card). The General Assembly's attempt to cloak its violation of the Home Rule Amendment in the guise of recognizing constitutional rights disregards these earlier decisions and violates the separation of powers by attempting to effectively usurp the judiciary's role in determining the constitutionality of local firearm regulations.

As further recognized by the Eighth District the General Assembly with the enactment of R.C. 9.68 "attempts to coerce municipalities into repealing or refusing to enforce longstanding local firearm regulations using the significant burden of financial litigation penalties." *Cleveland v. State* at ¶ 34. R.C. 9.68 provides in this regard that:

"* * * [T]he court shall award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section."
R.C. § 9.68(B).

As recognized further by the Eighth District the General Assembly with such penalty language invites unwarranted litigation in circumstances where "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." *Id.*

Such mandatory financial penalty language incorporated with the statute's attempted preemption of all local firearm regulations would potentially subject

municipalities to financial penalties in defending local regulations that have been previously upheld as constitutional. The mischief caused by the General Assembly is evidenced by *Buckeye Firearms Foundation et al. v. City of Cleveland et al.*, Cuyahoga County Court of Common Pleas, Case no. 685734, wherein Plaintiffs seeks a declaration that Cleveland's firearm ordinances are unconstitutional and unenforceable under the preemptive authority of R.C. 9.68 and "a mandatory award for their attorney fees and costs for bringing this action pursuant to R.C. 9.68(B)." The Eighth District was correct in holding that the General Assembly's enactment R.C. 9.68 violates recognized separation of powers.

II. APPELLEE'S ARGUMENT

A. Appellant State of Ohio's Proposition of Law No. 1:

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

1. **The State has no comprehensive, statewide legislative scheme that regulates firearms and R.C. 9.68 is not a general law that displaces municipal firearm ordinances.**

"In the absence of any accompanying regulatory scheme by the State, the General Assembly's statement of intent to occupy the field does not preclude a municipality from exercising its police powers in that area." *Village of West Jefferson v. Robinson* (1965), 1 Ohio St.2d 113,118. The State claims the existence of "comprehensive" firearm laws subsequent to Sub. H.B. 347 and the enactment of R.C. 9.68 without any substantiating evidence to back up the claim. R.C. 9.68 is not a "magic wand" and the General Assembly's expressed intention to preempt all local firearm laws does not magically create comprehensive laws that trump the Home Rule Amendment. See e.g. *AFSA* at ¶

31, *Clyde* at ¶ 29; see also e.g. *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008 -Ohio-270, at ¶ 38 wherein the Court recognized:

Some of the parties advance a preemption argument, claiming that the state has intended to completely occupy the field of traffic regulation, thereby preempting any action by municipalities. Such a home rule analysis has never been adopted by a majority of this court, and we decline to apply such an analysis today.

The predatory lending scheme upheld in *American Fins. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, is quite unlike what the State is purporting to accomplish with R.C. 9.68 in the absence of a statewide comprehensive scheme regulating firearms. *AFSA* addressed an enactment that included:

sections R.C. 1.63 and 1349.25 through 1349.37, which incorporated much of the substance of the federal Home Ownership and Equity Protection Act (“HOEPA”) of 1994 into Ohio law, requiring lenders to make certain disclosures to mortgagors on certain loans.

The Court with *AFSA* upheld R.C. 1.63 finding the statute was “clearly part of comprehensive statewide legislative regulation that relates to all consumer mortgage lending.” *Id.* at ¶ 33. R.C. 9.68 is not part of any similar “comprehensive statewide legislative regulation.”

The clear lack of any comprehensive firearm regulatory program distinguishes the State’s attempted reliance on *Ohio Assn. of Private Detective Agencies v. North Olmsted* (1992), 65 Ohio St.3d 242 and *Clermont Environmental Reclamation Co. v. Wiederhold* (1982), 2 Ohio St.3d 44. In *OAPDA v. N. Olmsted* this Court recognized that Chapter 4749 implemented a “statewide regulatory program” addressing the licensure of private detectives and security guards. Chapter 4749, however, did not attempt to claim preemption over all local authority and even mandated at R.C. 4749.09 that a regulated licensee “who operates in a municipal corporation that provides by ordinance for the

licensing, registering, or regulation of private investigators, security guard providers, or their employees *shall conform to those ordinances insofar as they do not conflict with this chapter.*” (emphasis added). The State wants to remove from evaluation of R.C. 9.68 the recognized “conflict” test.

The State’s further reliance on *Clermont* to support any expressed preemption argument in support of R.C. 9.68 is also misplaced. In *Fondessy Ents., Inc. v. Oregon* (1986), 23 Ohio St.3d 213, this Court clarified *Clermont*’s application of R.C.3734.05(D)(3) and made clear that the Court was not endorsing statutory preemption of municipal authority contrary to Article XVIII, Section 3. See *Fondessy*, discussion at pp. 215-216. *Fondessy* makes clear that *Clermont* does not authorize State preemption of local constitutional authority, holding “the language of R.C. 3734.05(D)(3) cannot be employed to nullify the police power granted the city of Oregon by the Home Rule Amendment.” *Id.* at 217. The Court reasoned:

Furthermore, as “[t]he power of any Ohio municipality to enact local police regulations is derived directly from Section 3 of Article XVIII of the Ohio Constitution and is no longer dependent upon any legislative grant thereof,” the same police power cannot be extinguished by a legislative provision. *West Jefferson v. Robinson* (1965), 1 Ohio St.2d 113, 205 N.E.2d 382 [30 O.O.2d 474], paragraph one of the syllabus, *Scalera, supra*, 135 Ohio St. at 66, 19 N.E.2d 279. If R.C. 3734.05(D)(3) were elevated to a level of “express preemption” (its level as a result of the judgments of the courts below), no police power ordinance in the instant field would survive long enough to face a conflict test against a state statute.

2. R.C. 9.68 is not a general law and merely purports to limit municipalities’ local police powers in the field of firearms.

A state statute that purports only to limit a municipality’s local police powers is not a general law and will be struck down as unconstitutional in violation of the Home Rule Amendment. *West Jefferson*, 1 Ohio St.2d at 118; see also, *Canton*, *supra* at ¶ 36;

Linndale v. State (1999), 85 Ohio St.3d 52, 53 (“If [the legislation at issue] is not a law applying to citizens generally, but an attempt to limit the powers of a municipal corporation to adopt or to enforce police regulations, it must be struck down as unconstitutional.”).

3. R.C. 9.68 does not regulate conduct.

. R.C. § 9.68 fails to prescribe a rule of conduct upon citizens generally because it establishes no positive regulation. The question must be asked given the recognized lack of any comprehensive statewide scheme regulating firearms at the time R.C. 9.68 was enacted, what regulations are being set forth with the statute and what conduct is it regulating in support of the argument that it constitutes a general law? The United States Constitution, the Ohio Constitution, state laws, and federal laws as referenced in the provision were already in existence and already regulating the conduct of citizens without reference to R.C. 9.68. The intent of R.C. § 9.68 is to regulate the conduct of local authorities by subtracting municipal legislative authority from the governing mix of firearm laws in Ohio. The statute is deficient and fails to constitute a general law.

B. Appellant 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.

Briefly and in recognition of the City’s position statement, the General Assembly in adopting R.C.9.68 directly contravened the Home Rule Amendment by attempting to abrogate existing local police power to regulate in the field of firearms. R.C. 9.68’s preemption of local authority in the absence of general laws was undertaken contrary to the Ohio Supreme Court’s long standing holdings that the local regulation of firearms is constitutional. The legislature in seeking to limit this Court’s recognition of municipal

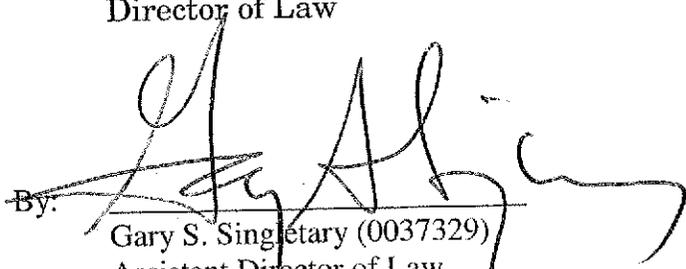
constitutional authority is in violation of the separation of powers doctrine. The General Assembly compounded its abuse of legislative authority by attempting to coerce municipalities into repealing or refusing to enforce long-standing local firearm regulations by mandating the award attorneys fees and costs where a local ordinance is found to be in conflict with R.C. 9.68. Perpetuation of an unconstitutional statute through a legislative club of mandated financial penalty abuses the General Assembly's authority.

III. CONCLUSION

For the reasons addressed herein the City requests that the Court deny the State's request for jurisdiction. All constitutional questions and matters of public and great general interest raised in the State's memorandum have been previously addressed by this Court. Consistent with this Court's precedent the issues have been properly resolved with the judgment of the Eighth District Court of Appeals.

Respectfully submitted;

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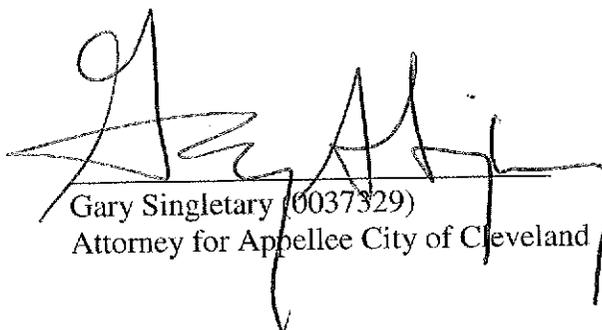
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the "Appellee City of Cleveland's Memorandum in Response to Appellants' Memoranda in Support of Jurisdiction" was served by regular U.S. mail this 15th day of January 2010 to:

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