

ORIGINAL

IN THE  
SUPREME COURT OF OHIO

CITY OF CLEVELAND,	:	Case No. 09 – 2280
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
STATE OF OHIO,	:	
	:	
Defendant-Appellant.	:	Court of Appeals Case
	:	No. 92663

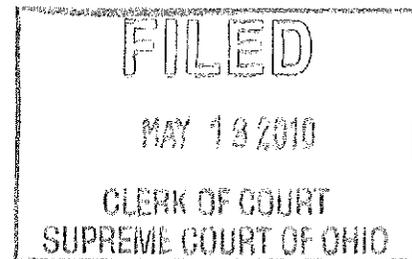
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**BRIEF OF *AMICUS CURIAE* NATIONAL SHOOTING SPORTS FOUNDATION, INC.  
IN SUPPORT OF APPELLANT STATE OF OHIO**

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## INTRODUCTION

The home-rule authority given to municipalities under Section 3, Article XVIII of the Ohio Constitution is not unlimited. It may not be used to adopt and enforce regulations that are in conflict with the general laws in Ohio reflecting the exercise of regulatory power and prescribing comprehensive rules of conduct uniformly on matters of statewide concern. Home-rule authority does not exist to inflict a patchwork of municipal ordinances from one community to the next that conflict with statewide general laws protecting the rights of all Ohio citizens.

The principal issue in this case is whether the laws and regulations in Ohio governing the ownership, possession, purchase, transport, storage, carrying, and sale of firearms are general laws to which conflicting municipal ordinances must yield. The Ohio General Assembly enacted R.C. 9.68 and expressed its clear intent that any restrictions on the ownership, possession, purchase, sale, transfer, transport and storage of firearms and ammunition in Ohio are limited to those found in federal and state firearms laws. The City of Cleveland (hereafter “the City”) challenged R.C. 9.68 in the trial court and sought a declaration that the General Assembly’s statement of intent unconstitutionally infringed on its home-rule powers. The City did not claim that any of its ordinances were in conflict with R.C. 9.68 or any other statewide firearm law. Instead, the City merely asserted that R.C. 9.68 is not a general law and could not be used to limit its home-rule powers.

The trial court held that R.C. 9.68 is a general law that did not unconstitutionally infringe on municipal home-rule authority. The Court of Appeals reversed the trial court and held that R.C. 9.68 is not a general law. The Court of Appeals’ decision was based on a faulty and incomplete analysis of statewide firearms laws in Ohio and a misapplication of the analytical framework adopted by this Court’s in home-rule cases.

This Court has clearly and repeatedly directed that all relevant statewide laws should be considered *in pari materia* in determining whether there is a general law in Ohio regulating a subject on which home-rule authority is claimed. Instead of considering R.C. 9.68 *in pari materia* with the full collection of statewide firearms regulations in Ohio, the Court of Appeals incorrectly focused on R.C. 9.68 in isolation. In doing so, the Court of Appeals was able to find that R.C. 9.68 is not comprehensive, does not reflect the exercise of regulatory power and does not prescribe rules of conduct on citizens. Its deliberately narrow and improper focus on only R.C. 9.68 obscured the existence of extensive and uniform statewide firearms laws in Ohio and steered the court to the only conclusion its chosen analytical framework would permit: R.C. 9.68 is not a general law and is an unconstitutional attempt by the State to limit the home-rule authority of municipalities.

When all of the statewide firearms laws and regulations are considered, their comprehensive nature is obvious. They prescribe rules of conduct on Ohio citizens generally, operate uniformly throughout the State and undeniably reflect the exercise of regulatory power over firearms. Under the test articulated by this Court in *Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2205, the statewide firearms laws in Ohio are general laws. Their existence, together with the General Assembly's clear expression of intent in R.C. 9.68 to occupy the firearm regulatory field, requires that the Court of Appeals be reversed and R.C. 9.68 be held an appropriate and constitutional part of the State's regulatory police power on a subject of statewide concern.

#### **STATEMENT OF INTEREST OF *AMICUS CURIAE***

The *amicus curiae* is the National Shooting Sports Foundation, Inc. ("NSSF"), the trade association for the firearms, ammunition, hunting and shooting sports industry. Formed in 1961,

the NSSF is a Connecticut non-profit tax-exempt corporation with a membership of approximately 5,700 federally licensed firearms manufacturers, distributors and retailers; companies manufacturing, distributing and selling shooting and hunting related goods and services; sportsmen's organizations; public and private shooting ranges; gun clubs; publishers and individuals. As of March 2009, 180 NSSF members resided in Ohio.

The NSSF's mission is to promote, protect and preserve hunting and the shooting sports by providing trusted leadership in addressing industry challenges; advancing participation in and understanding of hunting and shooting sports; reaffirming and strengthening its members commitment to the safe and responsible sale and use of their products; and promoting a political environment that is supportive of America's traditional hunting and shooting heritage and Second Amendment freedoms.

The NSSF's interest in this case derives principally from the fact that their federally licensed firearms manufacturer, distributor and retail dealer members provide lawful commerce in firearms and make exercise of an individual's constitutional right to keep and bear arms possible. Moreover, federal firearms licensees are required to comply with the requirements of state and local laws applicable to the conduct of their businesses. A patchwork of different firearms-related municipal laws across Ohio will impose hardships on their lawful and licensed business activities. All citizens of Ohio, regardless of where they live, are equally entitled to exercise their fundamental constitutional right to keep and bear arms and to lawfully own, possess, purchase, sell, transfer, transport, store and carry firearms under the same rules and restrictions. The NSSF submits this brief in support of Appellant State of Ohio and urges this Court to reverse the decision of the Court of Appeals.

## STATEMENT OF FACTS

The amicus adopts the statement of facts set forth by Appellant State of Ohio in its brief.

## ARGUMENT

### I. ***Proposition of Law No. 1: A Citizen's Fundamental Constitutional Right to Keep and Bear Arms Is Entitled to Uniform Protection Across the State of Ohio.***

An individual citizen's right to keep and bear arms is protected by the Ohio Constitution. Ohio Const., Art. I, § 4 ("The people have a right to bear arms for their defense and security..."). The right to keep and bear arms is a fundamental right belonging to all Ohio citizens regardless of whether they live in Cleveland or Zanesville or whether the majority of persons in their communities or their elected officials place less value on the free exercise of the right than those residing or elected elsewhere in Ohio. In recognition that this fundamental individual right is entitled to protection in every Ohio community, the General Assembly enacted R.C. 9.68:

The individual right to keep and bear arms, being a fundamental individual right that predates the United States Constitution and Ohio Constitution, and being a constitutionally protected right in every part of Ohio, the general assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition. Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components and its ammunition.

R.C. 9.68 (2006).

Like other fundamental rights protected by the Ohio Constitution, the right to keep and bear arms is not absolute. *Klein v. Leis*, 99 Ohio St. 3d 537, 2003-Ohio-4779, ¶ 7. However, the General Assembly has made it clear that limitations on the exercise of the right are only those "specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law". R.C. 9.68. A conflicting patchwork of municipal laws and regulations imposing greater or

different restrictions on Ohio citizens' ability to exercise their constitutional right by possessing, purchasing, selling, transporting and storing firearms is unconstitutional.<sup>1</sup>

The General Assembly's purpose in enacting R.C. 9.68 was clear and should be honored: enforcement of uniform statewide firearms laws ensures that the fundamental constitutional right afforded to all Ohio citizens is not unevenly protected in Ohio communities or taken away altogether. Home-rule authority does not exist to "impinge on matters which are of a state-wide nature or interest". *State ex. rel. Hackley v. Edmonds*, (1948) 150 Ohio St. 203, 212. Protection of the fundamental constitutional rights of all Ohio citizens is undeniably a matter on which a statewide interest exists.

**II. Proposition of Law 2: R.C. 9.68 Is a General Law That Prohibits Adoption and Enforcement of Conflicting Municipal Ordinances Under Home-Rule Authority.**

Municipalities may exercise police powers so long as they do not conflict with "general laws". Section 3, Article XVIII of the Ohio Constitution 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.

The first step in analyzing whether the existence of a statewide law prohibits home-rule adoption of a local ordinance is determining whether the local ordinance involves exercise of the municipality's police power over citizen conduct as opposed to municipal self government. *American Financial Services Assn v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, ¶ 30 (hereafter "*AFSA*"). If the local ordinance involves police powers exercised concurrently by the

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<sup>1</sup>Local municipal regulation of firearms is expressly permitted in two areas. R.C. 9.68 (D) expressly permits local zoning ordinances to regulate (1) the commercial sale of firearms in areas zoned for residential and agricultural uses and (2) the hours of operation and geographic areas where the commercial sale of firearms may occur.

State and a municipality, the ordinance must give way to a conflicting general state law. *Id.* Here, the City does not dispute that the regulation of firearms is an exercise of police power.

The second step is to determine whether the statewide law is a “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) set forth police, sanitary, or similar regulations, rather than purport to 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*, 95 Ohio St. 3d 149, 153, 2002-Ohio-2005. Here, the Court of Appeals held that R.C. 9.68 is not a general law because it does not meet the first, third and fourth prongs of the *Canton* test. The question of whether R.C. 9.68 is a general law is subject to *de novo* review by this Court. *City of Akron v. Callaway*, 162 Ohio App. 3d 781, 2005-Ohio-4095, ¶23.

The final step in a home-rule analysis is the “conflict test” which asks whether the local ordinance prohibits that which the general law permits, or vice versa. *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St. 96, 2008-Ohio-4605, ¶ 53). Because the City has not claimed that it has adopted an ordinance that is in conflict with R.C. 9.68, the final step cannot be reached by this Court.

**(A) The Court of Appeals Failed to Consider the Complete Extent of Statewide Firearms Law In Determining Whether R.C. 9.68 Is Part of a Comprehensive Law Under the First Prong of the *Canton* Test**

The determination of whether a challenged state law is “part of a statewide and comprehensive legislative enactment” under the first prong of the *Canton* test requires that all applicable legislative provisions addressing the subject matter be read *in pari materia*. *Clermont v. Environmental Reclamation Co.*, (1982) 2 Ohio St. 3d 44, 48 (a state statutory provision

prohibiting municipalities from adopting ordinances impairing the authority of the Hazardous Waste Facility Approval Board “should not be read in isolation” from other provisions dealing with control of hazardous wastes); *Ohio Assoc. of Private Detective Agencies, Inc. v. North Olmsted*, 65 Ohio St. 242, 245, 1992-Ohio-65 (a state statutory provision prohibiting local license fees did not fail to qualify as a general law when read in connection with the statewide regulation of security personnel); *Mendenhall v. City of Akron*, 117 Ohio St. 33, 2008-Ohio-270, ¶ 27 (isolated provisions within state traffic laws must be read *in pari materia* with other provisions when determining whether a general law exists); *see also D.A.B.E., Inc. v. Toledo-Lucas County Board of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, ¶ 19 (“Statutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent”). The Court of Appeals mistakenly failed to consider the full breadth of the statewide firearms laws and regulations in Ohio when it found that statewide regulations are “not comprehensive” in Ohio. *Cleveland v. State*, 2009 WL 3772461 \*4 (Ohio App. 8 Dist.).

The General Assembly expressly stated in R.C. 9.68 that the “uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale or other transfer of firearms” are the federal and state laws on the subjects. R.C. 9.68 should therefore be read *in pari materia* with both relevant federal law and regulations and existing state law to determine whether there are comprehensive statewide firearms laws in Ohio under the first prong of the *Canton* test.

In *AFSA*, 112 Ohio St. 3d 170, 2006-Ohio-6043, this Court did exactly that. The state statute at issue had been enacted as part of broader legislation addressed to statewide predatory lending practices. The statute authorized the state to “solely... regulate the business of

originating, granting, servicing, and collecting loans ... in lieu of all other regulations of such activities by any municipal corporation or other political subdivision”. *Id.* at 176. The City challenged the statute on the basis that it was not a general law and thus did not limit its own legislative authority, a challenge identical to its challenge of R.C. 9.68 in this case.

Like R.C. 9.68, the challenged statute in *AFSA* specifically incorporated federal law into the state statutory scheme. This Court held that the broader legislative enactment, of which federal predatory lending law and the challenged statute were part, was “clearly part of a comprehensive statewide legislative regulation that relates to all consumer mortgage lending”. *Id.* The Court further held that the existence of comprehensive predatory lending law together with the General Assembly’s expressed intent to occupy the consumer mortgage lending field, indicated that predatory lending was “an area where state dominance seems to be required”. *Id.* (citation omitted). The analysis used by the Court in *AFSA* requires the same conclusion in this case. Statewide regulatory dominance over firearms ownership, possession, purchase, transport, storage, carrying and sale already exists through federal and state legislative enactments.

This Court has already held that certain provisions in the statewide firearms laws are general laws. In *Cincinnati v. Baskin*, 112 Ohio St. 3d 279, 2006-Ohio-6422, ¶ 13, the statewide prohibition on knowing acquisition, possession and use of certain semi-automatic firearms in R.C. 2923.17(A) was held to be a general law. In *Ohioans for Concealed Carry*, 120 Ohio St. 3d. 96, 2008-Ohio-4605, ¶ 52, the statewide rights and limitations on licensed concealed handgun carry in R.C. 2923.126 were found to be general laws. There is no reasoned basis why the other statewide firearms laws in Ohio should not be afforded the same status as general laws in a home-rule analysis.

**(1) The Statewide Laws and Regulations in Ohio Regarding Firearms Ownership, Possession, Purchase, Transport, Carrying and Sale Are Comprehensive.**

Curiously, the Court of Appeals in this case relied on *AFSA* in support of its conclusion that statewide firearms laws in Ohio are not comprehensive. After noting that statewide predatory lending law at issue in *AFSA* incorporated federal law, the Court of Appeals found statewide predatory lending law to be in “contrast” to statewide firearms law, which it believed left “a great deal of firearms activity unregulated”. *Cleveland*, 2009 WL 3772461 \*4. However, the “contrast” observed by the Court of Appeals was only seen because the existence, applicability and breadth of the federal firearms laws were ignored.

Instead of examining the statewide federal and state laws under the first prong of the *Canton* test, the Court of Appeals relied on Justice O’Connor’s concurring opinion in *Baskin* and adopted her conclusion that “Ohio has barely touched on the subject of firearms possession, use, transfer and ownership”. *Baskin*, 112 Ohio St. at 295. The Court of Appeals reliance on Justice O’Connor’s conclusion was misplaced. In *Baskin*, the question of whether the state firearms law in issue was a general law under the *Canton* test was not in dispute. The Court readily concluded that the statute was part of a statewide comprehensive enactment and a general law under the *Canton* test. *Id.* at 281. Justice O’Connor concurred. *Id.* at 285. The issue before the Court was limited to whether the state’s general law was in conflict with a municipal ordinance – the final step in a home-rule analysis. Although Justice O’Connor’s concurring opinion in *Baskin* is thoughtful and well-reasoned discussion of the complexities attending application of the conflicts test, it is not helpful on question of whether the federal and state laws referenced in R.C. 9.68 are comprehensive under the first prong of the *Canton* test. The purpose of her review of state-

enacted firearms laws was not to determine whether comprehensive statewide firearm laws exist in Ohio.

Justice O'Connor used her concurring opinion in *Baskin* to amplify the view she expressed in her concurring opinion in *AFSA* only weeks earlier: valid express preemption language from the General Assembly on a matter of statewide concern makes further conflict analysis unnecessary. In place of the "conflict test" used by this Court in home-rule cases, Justice O'Connor urged adoption of a "preemption test", which she believed to be a more workable final step in a home-rule analysis. In *Baskin*, Justice O'Connor reviewed the existing state-enacted firearms laws within the framework of her "preemption test" to determine only whether the General Assembly had impliedly preempted the field of firearms regulations by virtue of the breadth of its legislative enactments. She did so because R.C. 9.68 was not yet law and the General Assembly had not yet expressly stated its intent that statewide firearms laws were to occupy the firearms regulatory field in Ohio: "The legislature has never made clear that it intends to preempt local ordinances concerning firearms, and as long as the local regulations are reasonable and not in direct conflict with existing Ohio law, this court should not infer preemption." *Id.* at 297. Moreover, federal firearms laws were not relevant to Justice O'Connor's preemption analysis in *Baskin* because their existence did not yet shed light on whether the General Assembly intended to occupy the regulatory field. Notably, following enactment of R.C. 9.68, Justice O'Connor voted with the majority in *Ohioans for Concealed Carry* which held that the state firearms law in issue was part of a statewide comprehensive legislative enactment and was a general law to which the conflicting municipal ordinance must yield. 120 Ohio St. 3d at 103.

Now, following enactment of R.C. 9.68, the legislature has made it clear that statewide firearms laws in Ohio are to occupy the regulatory field and those laws include federal firearms laws. The federal firearms laws are properly part of an *in pari materia* analysis of whether the statewide firearms laws in Ohio are comprehensive under the first prong of the *Canton* test. There is no question that the statewide firearms laws in Ohio fit the definition of a comprehensive legislative scheme.

Across Ohio, persons engaged in the business of selling firearms and manufacturing ammunition must be licensed by the federal government to do so. 18 U.S.C. § 923(a). Under the law in Ohio, each person applying for a license to sell firearms must notify the local chief law enforcement officer of the application. 18 U.S.C. § 923(d)(1)(F)(iii). License applicants must certify that they will comply with the state and local laws applicable to the conduct of their businesses. 18 U.S.C. 923(d)(1)(F). Applicants for federal firearms licenses in Ohio are required to pay a fee and submit fingerprints with the application. 18 U.S.C. § 921(c). Licensed retail firearms dealers in Ohio must renew their licenses every three years. 18 U.S.C. § 923(a)(3)(B).

Persons licensed to engage in the business of selling firearms in Ohio must have premises from which business is conducted. 18 U.S.C. § 921(d)(1)(e). Each Ohio citizen applying for a license to sell firearms must certify that he or she will make secure gun storage and safety devices available to purchasers. 18 U.S.C. § 921(d)(1)(6). Persons licensed to sell firearms in Ohio must maintain records of their transactions and make those records available for examination by law enforcement conducting criminal investigations. 18 U.S.C. § 921(g)(1)(B). Under the law in Ohio, a person licensed to sell firearms must report the sale of two or more handguns to the same person within five consecutive business days to the U.S. Attorney General and to a designated state or local law enforcement agency where the sale took place. 18 U.S.C. §

923(g)(3)(A). Ohio licensees must also report to the U.S. Attorney General the theft or loss of firearms from their inventories within 48 hours of discovery. 18 U.S.C. § 921(g)(6).

Licensed sellers of firearms in Ohio may not sell firearms or ammunition to persons under indictment for or convicted of crimes punishable by imprisonment for more than one year. 18 U.S.C. § 922(d)(1). The law in Ohio also prohibits licensed sellers from selling firearms or ammunition to fugitives from justice, unlawful users of controlled substances, persons adjudicated as mental defectives, persons who have been committed to mental institutions, illegal aliens, persons who have been dishonorably discharged from the Armed Services, persons who have renounced U.S. citizenship, persons who are subject to court orders restraining them from threatening family members, and persons who have been convicted of misdemeanor domestic violence crimes. 18 U.S.C. § 922(d)(2) through (9). The law in Ohio requires each licensed seller to submit each would-be purchaser of a handgun to a law enforcement background check to verify that the sale would not violate federal or state law. 18 U.S.C. § 922(s)(1).

It is unlawful for a licensed seller in Ohio to sell automatic firearms, short barreled shotguns and short barreled rifles. 18 U.S.C. § 922(a)(4). It is also unlawful for a licensed seller in Ohio to sell firearms that are not detectable by walk-through metal detectors. 18 U.S.C. § 922(p)(1)(A). Armor piercing ammunition may not be sold under the law in Ohio. 18 U.S.C. § 922(a)(2)(7). The law in Ohio requires that licensed sellers provide a secure gun storage or safety device with each handgun they sell. 18 U.S.C. § 922(z).

The law in Ohio prohibits firearm possession by fugitives from justice, those under indictment for or convicted of violent felonies and illegal drug possession or sale, those dependent on drugs or alcohol and persons adjudicated as mental incompetents. R.C. 2923.13. Under the law in Ohio, no person may sell a handgun to a person who is under twenty-one years

old. R.C. 2923.21(A)(2). No person may sell a rifle or shotgun to a person who is under eighteen years old. R.C. 2923.21(A). No person may permit a person under the age of twenty-one to use a handgun or under the age of eighteen to use a rifle or shotgun except for lawful hunting, sporting or educational purposes. R.C. 2923.21(A)(4).

Possession of firearms is also prohibited in Ohio courthouses. R.C. 2923.123.<sup>2</sup> No person may, under the law in Ohio, possess a firearm in a school safety zone. R.C. 2923.122. Firearm possession is generally prohibited in Ohio on premises licensed for alcohol consumption. R.C. 2923.121. It is unlawful in Ohio to possess firearms in detention and mental health facilities. R.C. 2921.36. Possession of firearms is likewise illegal on airport grounds in Ohio. R.C..08. Firearms possession in state parks in Ohio is generally prohibited. R.C. 1541.19. Persons under the influence of drugs or alcohol may not carry or use a firearm under the law in Ohio. R.C. 2923.15.

Under the law in Ohio, no person may carry a concealed handgun without first meeting certain requirements and receiving a license to do so. R.C. 2923.125. Concealed carry license qualifications include certification that the license is sought for personal or family defense purposes and completion of a firearm safety course. R.C. 2923.125(B)(3) and (G). Restrictions exist on where a licensed person may carry a carry a concealed handgun, including churches, synagogues, mosques, open air arenas where alcohol is consumed, school safety zones, universities and the property of private employers who prohibit the presence of firearms. R.C. 2923.126(B) and (C)(1). Persons licensed to carry concealed handguns in Ohio are permitted to

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<sup>2</sup> Exceptions to this prohibition exist in this provision and in other provisions found in sections 2923.11 through 2923.24 of the Ohio Revised Code. Generally, these exceptions address possession by law enforcement officers and others who are authorized by the State to carry firearms in the course of their official duties.

transport their firearms in a loaded condition but are required to conduct themselves in specific ways if stopped by law enforcement. R.C. 2923.126(A). All lawful owners of firearms in Ohio may transport their firearms from place to place provided that the firearm is unloaded and neither the firearm nor its ammunition is readily accessible. 18 U.S.C. § 926A.

Subject to certain narrow exceptions, a person may not knowingly discharge a firearm in Ohio while in a motor vehicle. R.C. 2923.16. It is unlawful in Ohio to discharge a firearm in a school safety zone or at a person's home. R.C. 2923.161. It is generally illegal in Ohio to discharge a firearm within one hundred yards of a cemetery. R.C. 2923.162(A)(1). Discharge of a firearm is generally illegal in Ohio if it occurs on a lawn, park or other ground appurtenant to a schoolhouse, church, inhabited dwelling, the property of another or a charitable institution. R.C. 2923.162(A)(2). It is unlawful to discharge a firearm in Ohio on or over a public road or highway. R.C. 2923.162(A)(3).

The comprehensive nature of the statewide firearms laws and regulations in Ohio is clear. Consideration of R.C. 9.68 *in pari materia* with the full array of statewide firearm laws it specifically incorporates, can lead to one conclusion: R.C. 9.68 is part of the comprehensive statewide laws in Ohio relating to firearms ownership, sale and possession.<sup>3</sup> "Comprehensive" legislation does not have to eliminate all loopholes. *See Dayton v. State of Ohio* (2nd Dist.), 157 Ohio App. 3d 736, 2004-Ohio-3141, ¶ 89 (" '[C]omprehensive' does not mean perfect. The problem with courts' making judgments about the effectiveness of legislation is that perfect

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<sup>3</sup> Additional federal laws and regulations regarding firearms are found at 15 U.S.C. § 7901 *et seq.* (Protection of Lawful Commerce in Arms); 18 U.S.C. § 1715 (Nonmailable Firearms); 22 U.S.C. § 2778 (Arms Export Control Act); 26 U.S.C. § 5801 *et seq.* (The National Firearms Act); 27 C.F.R. Part 447 (Importation of Arms, Ammunition and Implements of War); 27 C.F.R. Part 478 (Commerce in Firearms and Ammunition); 27 C.F.R. Part 479 (Machine Guns, Destructive Devices and Certain Other Firearms); and 28 C.F.R. Part 25 Subpart A (National Instant Criminal Background Check System).

legislation is never written”). Any perceived “gaps” in the statewide law in Ohio should not be seen as an invitation to municipalities to step in and regulate themselves. In light of the General Assembly’s clearly expressed intent to “provide uniform laws throughout the state”, any particular aspect or area of firearms ownership and possession that has been left unencumbered by federal and state law is more appropriately seen as an invitation to Ohio citizens to freely exercise their constitutional right to keep and bear arms in that area without restriction.

**(B) Consideration of R.C. 9.68 *In Pari Materia* With Statewide Firearms Laws and Regulations in Ohio Requires the Conclusion That R.C. 9.68 Meets the Second, Third and Fourth Prongs of the *Canton* Test.**

Whether R.C. 9.68 satisfies the second, third and fourth prongs of the *Canton* test is easily addressed once R.C. 9.68 is properly considered along with the statewide firearms laws it specifically references. The second prong is satisfied because R.C. 9.68 unquestionably operates uniformly across the state. The Court of Appeals agreed. *Cleveland*, 2009 WL 3772461 \*5. The third prong is likewise satisfied because the statewide laws and regulations of which R.C. 9.68 is a part, plainly demonstrate exercise of the state’s regulatory police power over firearms. The Court of Appeal’s conclusion that the statute does not establish police regulations but only “limits the legislative power of municipal corporations” was based on its improper consideration of R.C. 9.68 in isolation. Finally, the fourth prong of the *Canton* test is met because the statewide laws and regulations of which R.C. 9.68 is a part, prescribe rules of conduct on citizens generally. The Court of Appeals’ conclusion that R.C. 9.68 only limits “law making by municipal legislative bodies” was the result of its focus on R.C. 9.68 in isolation. Proper consideration of R.C. 9.68 with the statewide firearms laws in Ohio of which it is a part leads to only one conclusion: R.C. 9.68 and the statewide laws it references prescribe rules of conduct on Ohio citizens.

## CONCLUSION

R.C. 9.68 is a general law. It is part of the statewide laws that prescribe comprehensive rules of conduct uniformly throughout Ohio regarding firearms ownership, possession, purchase, sale, transfer and storage. It constitutionally prohibits municipalities from adopting and enforcing ordinances that are in conflict with those rules of conduct. The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

NATIONAL SHOOTING SPORTS FOUNDATION, INC.



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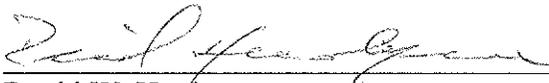
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**CERTIFICATE OF SERVICE**

David W. Hardymon, being first duly sworn on oath, deposes and states that he has served a copy of **Brief of *Amicus Curiae* National Shooting Sports Foundation, Inc. in Support of Appellant State of Ohio** this 13th day of May, 2010, at 225 W. Wacker Drive, Chicago, Illinois 60606-1229, before 5:00 p.m. with proper postage prepaid to:

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