

**IN THE COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO**

CITY OF CLEVELAND,
Plaintiff and Appellant,

v.

STATE OF OHIO,
Defendant and Respondent,

Appellate Case No. CV-09-092663

On Appeal from the Court of Common Pleas, Cuyahoga County, Ohio
Trial Case No. CV-07-618492, Honorable Timothy H. McGinty, Judge

**BRIEF AND APPENDIX OF *AMICI CURIAE*
IN SUPPORT OF PLAINTIFF AND APPELLANT
CITY OF CLEVELAND**

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APPENDIX OF *AMICI CURIAE*
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I. INTRODUCTION

Amici curiae on behalf of Appellant City of Cleveland, Ohio (“the City”) urge this Court to grant the City’s request for declaratory relief by finding that Revised Code section 9.68 contravenes the Home Rule Amendment of the Ohio Constitution because it precludes local regulation of firearms in the absence of conflicting general law.

The Home Rule Amendment of the Ohio Constitution expressly grants municipalities the authority to adopt and enforce within their boundaries police regulations that do not “conflict” with a “general” law of the state. A state law that acts only to limit a municipality’s local constitutional police power — that is, by creating a legislative void that only the state can fill — is not a “general law” and is thus unconstitutional.

In December 2006, the Ohio General Assembly passed Sub. H.B. No. 347, titled “Firearms-Conceal Carry Licenses,” which includes revisions to the state’s concealed weapon licensing scheme¹ and R.C. section 9.68. Section 9.68 seeks to preempt — through nothing more than a statement to this effect — the municipal exercise of local police regulation by permitting only state and federal authorities to govern in the field of firearm control within Ohio. R.C. Section 9.68 does not enact a “general” law. Therefore, because R.C. section 9.68 is not a general law and instead merely limits municipalities’ (including Cleveland’s) constitutional home rule authority, it is unconstitutional.

Through this brief, each *amicus* supplements the City of Cleveland’s position by providing: (1) the history and policy behind Ohio’s adoption of its Home Rule Amendment; (2) a comparison of Ohio’s Home Rule to similar provisions from other states; (3) a history of cases construing Ohio’s Home Rule; and (4) relevant statistics that illustrate the necessity of allowing

¹ *Amici* are not asserting that the state’s concealed carry laws are invalid.

local governments to decide whether and how to regulate firearms based on the unique needs of their communities.² Through these points, this brief demonstrates: (1) the historically strong presumption of the validity of local ordinances under Home Rule in Ohio; (2) the broader scope of authority granted to municipalities under Ohio’s Home Rule as compared to preemption of local government authority by other states; (3) the long history of upholding Ohio ordinances enacted under Home Rule; and (4) the real and concrete need for local regulation of firearms in Ohio.

II. STATEMENTS OF INTEREST OF *AMICI CURIAE*

Amici curiae are Legal Community Against Violence, Ohio Coalition Against Gun Violence, Brady Center to Prevent Gun Violence, Coalition to Stop Gun Violence, States United to Prevent Gun Violence, Violence Policy Center, City of Akron, City of Columbus, City of Dayton, City of Dublin, City of Kettering, City of Parma, Village of New Albany, and City of Shaker Heights. Each *amicus* is actively engaged in efforts to reduce the costs that gun violence inflicts upon local, both rural and urban, communities. The Statement of Interest of each *amicus* is included in the attached Appendix of *Amici Curiae* (“AA”) as Tab 1.

Amici curiae submit this brief pursuant to Ohio Rule of Appellate Procedure 17 to seek a statement by this Court that the state recognizes, in the absence of a conflicting general law, the constitutional authority given to local municipalities to enact firearm regulations.

² “Firearm regulations,” “firearm control,” or “the field of firearms” refers to the ownership, possession, purchase, sale, transfer, transport, storage, or keeping of any firearm, part of a firearm, its components, and its ammunition as referenced in R.C. section 9.68(A).

III. STATEMENT OF THE CASE AND FACTS

Amici curiae hereby adopt, in its entirety, and incorporate by reference, the Statement of the Case and Statement of the Facts contained within the Appellant City of Cleveland’s Merit Brief. *Amici curiae* add the following as a backdrop for the brief:

- In 2005, the most recent year for which statistics are available, guns took the lives of 30,694 Americans in homicides, suicides and unintentional shootings. This is the equivalent of more than 84 deaths each day and more than three deaths each hour.³
- In 2005, 1,116 deaths occurred from firearm-related injuries in Ohio.⁴
- From January 1, 2009 to March 16, 2009, 28 of the 39 homicides throughout Northeast Ohio were caused by firearms.⁵

IV. HISTORY AND POLICY OF THE HOME RULE AMENDMENT

Under Ohio’s Home Rule Amendment, municipalities in Ohio have autonomy in the management of their local affairs, and may regulate within their bounds unless a local enactment conflicts with a general law of the state. To fully appreciate what this means, it is helpful to look at the history of and policy behind the source of that authority, and also to compare the relative “strength” of Ohio’s home rule provision to that of similar provisions in other states.

Ohio’s Home Rule scheme is set forth in Article XVIII of the Ohio Constitution. Of particular relevance, section 7 of the amendment — the “Home Rule” provision — provides:

“Any municipality may frame and adopt or amend a charter for its government and may, subject

³ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Injury Mortality Reports, 1999-2005* (2008) (hereinafter *WISQARS Injury Mortality Reports, 1999-2005*), at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html. AA, Tab 2.

⁴ *WISQARS Injury Mortality Reports, 1999-2005*, at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html. AA, Tab 3.

⁵ http://www.cleveland.com/datacentral/index.ssf/2009/01/northeast_ohio_homicides.html. AA, Tab 4.

to the provisions of Section 3 of this article, exercise thereunder all powers of local self-government.” Ohio CONST. art. XVIII, § 7. Section 3 of the article further provides that “[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 the general laws.” Ohio CONST. art. XVIII, § 3.

A. Home Rule Amendment Was Enacted To Provide Necessary Police Power

Article XVIII was adopted in 1912. The extent to which it vested nearly plenary power in municipal governments was a significant departure from the prior situation, when municipal corporations in Ohio were “creatures of the General Assembly and agencies of the state.” George D. Vaubel, *Municipal Home Rule in Ohio* (“Vaubel”), 3 OHIO N. U. L. REV. 1, 12 (1975).⁶ Municipalities had no inherent powers; they possessed only powers that were expressly granted by statute — or that could be “clearly implied” from the express grant — and the powers necessary to carry out those express powers. *Bloom v. City of Xenia*, 32 Ohio St. 461, 465 (1877); John E. Gotherman, *Municipal Home Rule and Charters* 2⁷ (citing 1 Dillon, *Municipal Corporations* 449 (5th ed. 1911)). Legislative grants of municipal authority were strictly construed. Where it was uncertain whether a municipality possessed a certain power, doubt was to be resolved against it. *See Bloom*, 32 Ohio St. at 465.

The effect of this legislative scheme was that municipalities lacked authority to enact even the most basic ordinance without legislative “permission” from the state. For example, in *City of Ravenna v. Pennsylvania Co.*, 45 Ohio St. 118, 126 (1887), the court held that the City of

⁶ Vaubel, Professor of Law Emeritus at Ohio Northern University Law School, has written extensively on the topic of home rule in Ohio. See, e.g., *Municipal Home Rule in Ohio* (pts. 1, 2, 3, 4 & 5), 3 OHIO N. U. L. REV. 1 (1975), 3 OHIO N. U. L. REV. 355 (1975), 3 OHIO N. U. L. REV. 643 (1976), 3 OHIO N. U. L. REV. 1099 (1976), 3 OHIO N. U. L. REV. 1376 (1976).

⁷ Available at <http://www.vanwer.org/gov/charter-article.htm>.

Ravenna could not enact an ordinance requiring the railroad to post a watchman to stand guard at a dangerous intersection to warn “teams and foot passengers” when trains were approaching. The power to require such a safeguard was clearly “in the nature of police power,” but that power was vested exclusively in the state unless the state conferred that power on the City by statute. *Id.* at 121.

Although lack of police power became untenable for cities and unwieldy for the state, early efforts to streamline the delegation of authority to the growing number of municipalities failed. Toward the turn of the century, a population-based municipal classification system was implemented, but was struck down in 1902 by the Ohio Supreme Court as a violation of the constitutional requirement of uniformity of laws. *See State ex rel. Atty. Gen. v. Beacom*, 66 Ohio St. 491 (1902); *State ex rel. Knisely v. Jones*, 66 Ohio St. 453 (1902). A Municipal Code was quickly enacted to fill the void, but it soon became clear that this, too, would be “inadequate to serve as a framework for all Ohio municipalities.” Vaubel, at 13. Many urban progressives had long argued for greater municipal autonomy as a means of enabling political, economic, and social reform in Ohio’s cities, and that call grew louder. *See* Barbara A. Terzian, *Ohio’s Constitutional Conventions and Constitutions*, in *THE HISTORY OF OHIO LAW* 63, 68, 112 (Michael Les Benedict & John F. Winkler, eds. 2004); *see also Federal Gas & Fuel Co. v. City of Columbus*, 96 Ohio St. 530, 533 (1917).⁸

⁸ In *Federal Gas*, Judge Wanamaker implied that courts had been wrong to deny that municipalities had inherent authority all along (*i.e.* even before the amendment of 1912). *Id.* at 532. He cited favorably “the very able opinion of Judge Thurman” in *Cass v. Dillon*, 2 Ohio St. 607 (1853), which had pointed out that municipalities had existed long before the Ohio Constitution and held that they should not be understood to be dependent on that instrument or the legislature for power. *Id.* at 533.

B. Policies Underlying Home Rule

These calls for reform culminated in the proposal of a constitutional amendment at the Ohio Constitutional Convention of 1912. The underlying policy objectives of the amendment, as stated upon its proposal to the convention, were to confer “upon cities for the benefit of those who live in cities control over those things peculiar to the cities and which concern the cities as distinct from the rural communities.” Vaubel, at 14 (citing 2 OHIO CONSTITUTIONAL CONVENTION, PROCEEDINGS AND DEBATES 1433 (1913) (“Convention”). More specifically, the drafters intended:

[T]o draw as sharply and as clearly as possible the line that separates general affairs from the business which is peculiar to each separate municipality[;]. . . to draw. . . a line between those two things and to leave the power of the state as broad hereafter with reference to general affairs as it has ever been, and to have the power of the municipalities on the other hand as complete as they can be made with reference to those things which concern the municipalities alone, always keeping in mind the avoidance of conflict between the two as far as possible. *Id.*

In short, the scope of municipal power was to be such that each municipality would be “as nearly autonomous locally as possible.” Vaubel, at 17 (citing 2 CONVENTION at 1439). The proposal was apparently well-received. Article XVIII — “Municipal Corporations” — was adopted.

The combined effect of Article XVIII’s provisions was a significant change in the mechanics of municipal governance and power vis-à-vis the state, and Ohio courts have, for the most part, recognized it as such.⁹ According to Vaubel, the effect of the amendment was to

⁹ See, e.g., *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 212 (1948) (the intent of the writers of the amendments was to give “the broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a state-wide nature or interest”); *City of Youngstown v. First Nat’l Bank of Youngstown*, 106

reverse the historic presumption against municipal power. *See* Vaubel, at 15 n.14 (citing 2 CONVENTION at 1439, 1446, 1458). Where before a municipality could regulate only if expressly authorized to do so by the General Assembly, it now could regulate unless the state enacted a positive law specifically conflicting with the local enactment. *See City of Youngstown v. Evans*, 121 Ohio St. 342, 345 (1929). This authority is understood to be “self-executing,” residing not in a legislative grant, but in the Constitution itself. *State ex rel. v. Durant*, 2 Ohio L. Abs. 75 (Ct. App. 1923) (“Section 3 of Art XVIII of the Constitution gives all municipalities the power of local self-government and such grant is self executing and no legislative action is necessary to make it available.”) (citing *Perrysburg (Vil) v Ridgeway*, 108 Ohio St. 245).¹⁰

C. The Sui Generis Quality Of Ohio’s Home Rule

“Home Rule” does not mean the same thing in every state, and there is no formula allowing for easy comparison of different state laws that preempt or authorize local laws. Nonetheless, when set against similar provisions in other state constitutions, the language of Ohio’s Home Rule provision stands out in two significant respects.

First, as noted above, municipal authority in Ohio is self-executing. It exists independent of authorization by the state General Assembly. In some states, however, municipalities can exercise only those powers that are conferred by the state legislature. Connecticut’s constitution provides, for example, that “the general assembly shall by general law delegate such legislative authority as from time to time it deems appropriate to towns, cities, and boroughs relative to the

Ohio St. 563, 575 (1922) (noting that the amendment “enlarged” what the court already understood — wrongly, perhaps (*see* p. 15) — to be an expansive inherent authority).

¹⁰ The *Durant* court defended this authority, holding that “the modern tendency has been more and more to sustain such enactments [as the zoning regulation at issue there]. As the population in cities increases, the protection of health and welfare of the inhabitants requires supervision and such enactments cannot be made without some sacrifice of individual rights of the inhabitants.” *Id.*

powers, organization and form of government of such political subdivisions.” Conn. CONST. art X, § 1. Missouri does the same. *See* Mo. CONST. art VI, § 19(a) (“Any city. . . shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are. . . not limited or denied. . . by statute.”).

Second, the language of Ohio’s home rule provision does not subject local authority to broad preemption simply by a legislative proclamation. This, too, is exceptional, even among states where municipal authority is self-executing. For example, in Illinois, municipal authority is similarly rooted in the constitution, and “subject only to limitations” set forth therein. Ill. CONST. art. VII, § (6)(a). But one such constitutional “limitation” is that a municipality may exercise power only “to the extent that the General Assembly by law does not specifically limit the concurrent exercise *or specifically declare the State's exercise to be exclusive.*” *Id.* at §(6)(h)(i) (emphasis added). Pennsylvania is another example. There, “[a] municipality. . . may exercise any power or perform any function *not denied by. . . the General Assembly at any time.*” Penn. CONST. art IX, § 2 (emphasis added).

Nothing in the Ohio provisions, on the other hand, suggests that the state can broadly “exclude” a municipality from an area of regulation, or “deny” a municipality authority otherwise granted to it by the Constitution, creating a legislative void that only the state can fill. Rather, “[m]unicipalities shall have authority to exercise *all* powers of local self-government and to adopt and enforce within their limits such [read: *all*] local police, sanitary and other similar regulations, *as are not in conflict with the general laws.*” Ohio CONST. art. XVIII, § 3 (emphases added). This means that to “preempt” local regulation, the state must enact a positive law that, though “general” in its application, is necessarily specific in its scope. Even then, such a law “preempts” only those local laws that are in direct conflict with it. All others remain valid.

See Village of Linndale v. State of Ohio, 85 Ohio St. 3d 52, 54 (1999) (citing *Struthers v. Sokol*, 108 Ohio St. 263 (1923) (“Municipalities in Ohio are authorized to adopt local police, sanitary and other similar regulations and derive no authority from, and are subject to no limitations of, the General Assembly, except that such ordinances shall not be in conflict with general laws.”)); *see also City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (2002) (setting forth the four-prong test, discussed in Part V(C) below, the third prong of which is that the state law must be a “regulation” rather than an act that purports to grant or limit local power).

The practical ramifications of this are significant. For an oversimplified example, consider the following hypothetical: A municipality is concerned for the safety of pedestrians on a particular side street where the current speed limit is 25 miles per hour. In Connecticut, the city could only lower the speed limit if the state had expressly authorized it to do so.¹¹ In Illinois, a city would have plenary authority to lower the speed limit, but the state could act to take that authority away by simply stating that *it* would regulate speed on all state roadways. In contrast, a city in Ohio could act to lower the speed limit unless and until the state had specifically acted to set the speed limit on all such streets to 25 miles per hour so that a local law reducing the limit would directly conflict with it.¹²

¹¹ It has done so at CONN. GEN. STAT. §14-218(a) (2009), which states, in part: “The traffic authority of any town, city or borough may establish speed limits on streets, highways and bridges or in any parking area for ten cars or more or on any private road wholly within the municipality under its jurisdiction; provided such limit on streets, highways, bridges and parking areas for ten cars or more shall become effective only after application for approval thereof has been submitted in writing to the State Traffic Commission and a certificate of such approval has been forwarded by the commission to the traffic authority.”

¹² In reality, and in contrast to the arena of firearm regulation, the Ohio legislature appears to have enacted legislation in this area. For example, the state has set not only specific maximum, but also *minimum* speeds on most roadways such that any lower limit set by a municipality would be in “direct conflict” and thus preempted. *See* OHIO REV. CODE § 4511.21(B)(I)(i) stating that it is “prima-facie lawful” for a motor vehicle to travel at speeds not exceeding those subsequently specified, and that if a locality believes this to be unsafe, it can by resolution

Thus, Ohio’s Home Rule provisions achieves the stated goal of making Ohio municipalities “nearly as autonomous as possible,” (Vaubel, at 17 (citing 2 CONVENTION at 1439)) both in the absolute sense, and also relative to other states’ statutory schemes.

V. THE SCOPE OF HOME RULE AUTHORITY

The plain language of the Home Rule Amendment states that municipalities can legislate only with respect to local affairs “within their limits.” They cannot enact regulations the impact of which, in form or function, necessarily extend beyond their boundaries so as to infringe on other municipalities’ respective exercise of the same authority. Ohio CONST. art. XVIII, § 7. The province of these more general affairs is therefore that of the state. The amendment is similarly explicit in prohibiting a municipality from enacting legislation that “conflict[s]” with the state’s general laws. *Id.* At issue here, then, is what constitutes a “general law” of the state sufficient to “conflict” with, and thus curb, this otherwise expansive local authority.

A. Early Cases

In general, courts have liberally construed the Home Rule Amendment to “grant[] to municipalities as *full and complete* authority to exercise all powers as it is possible to grant them without erecting each municipality into an independent sovereignty, wholly separate and apart from the state.” *Cleveland Tel. Co. v. City of Cleveland*, 98 Ohio St. 358, 380 (1918) (emphasis added); *see also* Vaubel at 17 (“[C]ourts have broadly held that the Home Rule Amendments and the implementing statutes passed under them, are to be liberally construed so that the objectives sought by their adoption might be gained”) (citing *City of Akron v. Zeisloft*, 22 Ohio N.P. 533, 541-42 (C.P. 1920); *State ex rel. Bailey v. George*, 92 Ohio St. 344 (1915)).

request the responsible state official to “determine and declare a reasonable and safe prima-facie speed limit.”

Specific examples of courts' implementation of this mandate abound. In *Youngstown v. Evans*, *supra*, for example, two defendants challenged convictions under local ordinances for transporting intoxicating liquors. *Youngstown*, 121 Ohio St. at 342. The defendants argued that the ordinances conflicted with R.C. section 3268, which authorized municipalities to impose a fine “not [to] exceed five hundred dollars” or imprisonment “not [to] exceed six months” for ordinance violations. *Id.* at 344. The local ordinances in question provided penalties in excess of these limits. *Id.* The Court upheld the convictions, finding that section 3268 did not prescribe a rule of conduct upon citizens generally but rather acted as “a limitation upon law making by municipal legislative bodies.” *Id.* at 345. Emphasizing the point that the general law must specifically conflict with local legislation, the Court held that the purpose of the Home Rule Amendment was to:

clothe municipalities with power to prescribe rules of conduct in all matters relating to local police, sanitary, and other similar regulations, where no rules had been prescribed by the General Assembly; and, as to the matter where the General Assembly had theretofore or might thereafter prescribe rules, the municipal ordinances and regulations would be effective only so far as consistent with general law. *Id.* at 347-8.

Similarly, in *Village of W. Jefferson v. Robinson*, 1 Ohio St. 2d 113 (1965), an encyclopedia salesman appealed his conviction for violating a local ordinance that banned solicitation at a private residence without a request or invitation from the residence owner or occupant. The salesman argued that, by banning this form of solicitation, the ordinance conflicted with R.C. sections 715.13 and 715.64, which permitted municipalities to grant licenses for door-to-door salesmen. *Id.* at 115. The Court found that the state laws only granted and limited legislative power to municipalities. *Id.* at 118. Because “general laws” under the Ohio Constitution were defined as “statutes setting forth police, sanitary or other similar regulations

and not statutes which purport only to grant or to limit the legislative [police] powers of a municipal corporation,” sections 715.13 and 715.64 were not considered general laws. *Id.* Therefore, the local ordinance was not in conflict with any general law and the conviction for violation of the ordinance was upheld. *Id.*

B. More Recent Cases

As Ohio courts continued to recognize that local governments were in the best position to tailor regulations to the needs of their own citizens, Ohio courts used the early cases as a foundation to continue upholding local ordinances under the Home Rule Amendment. For example, in *Village of Linndale v. State, supra*, the Village of Linndale and twenty-four other municipalities were prohibited from enforcing their own local speed and weight limits on portions of interstate freeways within their jurisdiction because of R.C. section 4549.17, a statute that precluded local law enforcement from issuing speed and excess weight tickets on freeways in certain situations. *Linndale*, 85 Ohio St. 3d at 52-53. The Court concluded that the state law did not impose any specific speed or weight standards but instead found that certain cities would not be permitted to enforce their own traffic laws in their jurisdictions. *Id.* at 55. Because it did not prescribe a rule of conduct upon citizens generally, “it unconstitutionally impinge[d] on the home-rule powers of the affected municipalities.” *Id.*

In *Fondessy Enterprises, Inc. v. Oregon*, 23 Ohio St. 3d 213, 214-16 (1986), a local ordinance regarding the monitoring of hazardous waste landfill facilities located within city limits was challenged because of R.C. section 3734, a statute that prevented additional zoning conditions on hazardous waste facilities. Despite the Court’s previous declaration that the state statute was a general law, the Court held that the local ordinance did not “alter, impair, or limit the operation of a state-licensed hazardous waste facility” and therefore was not in conflict with

the statute. *Id.* at 217. The Court emphasized that because the authority of municipalities to enact local police regulations was derived from the state Constitution and not from any legislative grant, “the same police power cannot be extinguished by a legislative provision.” *Id.* at 216.

Further, in *Mentor Green Mobile Estates v. Mentor*, 1991 Ohio App. Lexis 4052, at *1-2 (Ohio App. Ct. Aug. 23, 1991), plaintiff mobile home park disputed a local ordinance which permitted eight mobile home units per acre instead of the twelve mobile home units per acre allowed by R.C. section 3733.02. The court held:

Because the power of a home rule municipality was to be derived from the Constitution, the laws of the municipality would be every bit as authoritative and effective as a state law so long as the local law did not diminish the general state law: It is not intended to invade state authority in the least, but to make clear that the municipality has the right to enact such local police, sanitary and other similar regulations as are not in conflict with general laws. . . . A city can not make them less strict than the state, but it can make them more strict.” *Id.* at *10-11 (citations omitted).

Because the local ordinance did not permit something the state prohibited, the city’s stricter requirements were found to be within its constitutional power of home rule. *Id.* at *11.

C. *City of Canton* Test

These cases provided a framework for the four-part test now used to determine whether a state statute at issue is “general” law, and thus in “conflict” with a local ordinance. *Canton*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 21. In *Canton*, a local ordinance banned placement or use of manufactured homes as principal or accessory structures for residential use. *Id.* at ¶ 1. Soon after the ordinance was enacted, R.C. section 3781.184 took effect to prevent local governments from prohibiting the location of certain manufactured homes in areas where

single-family homes were permitted. *Id.* at ¶ 2. In considering prior cases that interpreted the scope of Home Rule, the *Canton* Court held that a state statute is a general law, and thus in conflict with local ordinances enacted under Home Rule authority only if it: (1) is part of a statewide and comprehensive legislative enactment; (2) applies to all parts of the state alike and operates uniformly throughout the state; (3) sets forth police, sanitary, or similar regulations, rather than granting or limiting municipal legislative power; and (4) prescribes a rule of conduct upon citizens generally. *Id.* at ¶ 21. After articulating and applying its four-part test, the Court found that section 3781.184 “[struck] at the heart of municipal home rule” and held it unconstitutional under Home Rule. *Id.* at ¶ 38.

Conversely, the Ohio Supreme Court struck down an ordinance enacted by the City of Clyde that prohibited the carrying of handguns in city parks. *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, 896 N.E.2d 967 (2008).¹³ The *Clyde* court found that the local law was invalid because it conflicted with section 2923.126, which allows concealed weapon license holders to carry concealed weapons anywhere in the state, with limited exceptions. *Id.* The court reasoned that section 2923.126 meets all of the general law conditions set out by the court in *Canton* and found a conflict because the local law prohibited carrying a firearm in a city park while the state law allows licensees to carry anywhere in the state. *Id.* at ¶ 53. As stated above, *amici* are not asserting that section 2923.126 or other concealed carry laws are invalid. Rather, *amici* argue that section 9.68 is unconstitutional because it purports to preempt local regulation of firearms where no conflicting general law exists.

¹³ While *amici* are not contesting the decision in *Clyde* or challenging the concealed carry law, some of the *amici* may not necessarily agree with the decision in *Clyde*.

VI. EXERCISE OF POLICE POWER UNDER HOME RULE

As illustrated through the timeline of cases above, Ohio courts have broadly interpreted and long adhered to the policy behind Home Rule by ruling in favor of municipalities that govern pursuant to their constitutional authority. It is this same sui generis quality of Ohio's Home Rule Amendment that has permitted municipalities to enact and enforce firearm regulations in accordance to their residents' needs.

A. Statistics Show That Local Firearm Regulations Must Reflect The Needs Of Local Residents

Although gun violence concerns many Ohio communities, the state has largely avoided regulating firearms. Just before the General Assembly's enactment of Sub. H.B. No. 347, Justice O'Connor examined Ohio's firearm regulations and specifically found that, in comparison to other states, "Ohio has barely touched upon the subject of firearm possession, use, transfer and ownership." *Cincinnati v. Baskin*, 112 Ohio St. 3d 279, 2006-Ohio-6422, 859 N.E.2d 514, ¶ 53 (2006) (concurring opinion by Justice O'Connor). Justice O'Connor further observed that because Ohio legislation only addressed a "handful of areas in regard to firearms. . . [m]unicipalities have been left to fill in the gaps left by Ohio law. . . ." *Id.*

Because urban communities generally experience higher crime rates than their rural counterparts, municipalities choose to regulate firearms in different ways. For example, Zanesville, which is centered in a largely rural area, has crime rates that are much lower than those of Cleveland. Zanesville has enacted only thirteen ordinances on weapons and explosives. In contrast, Cleveland, which is plagued by gun violence, has four chapters of laws dedicated to firearms, assault weapons, handguns, and explosives that total 46 ordinances.

The disparity between the scope of ordinances is fitting when population and crime statistics from each city are examined. The chart below shows the number of violent crimes reported by the Zanesville and Cleveland Police Departments, and total violent crimes reported in Ohio.¹⁴ This demonstrates why, as an urban community, Cleveland may desire a greater range and higher number of firearm regulations than a rural Ohio community such as Zanesville.

	Zanesville		Cleveland		Ohio	
	1980	2005	1980	2005	1980	2005
Year						
Population	28,600	25,335	572,657	458,885	10,766,808	11,470,685
Murder/Manslaughter	0	0	269	110	871	590
Rape	8	12	703	488	3,696	4,671
Robbery	72	41	6,802	3,744	24,082	18,673
Aggravated Assault	33	13	3,696	2,088	24,997	16,228
Total Violent Crime	113	66	11,470	6,430	53,646	40,162
Percent of Violent Crimes in Ohio	0.21%	0.16%	21.40%	16.00%	N/A	N/A

In contrast, Akron is considerably more urban than Zanesville yet not as large as Cleveland. With its population and crime statistics (shown below) falling between those of Zanesville and Cleveland, Akron proportionately enacted 29 firearm ordinances.¹⁵

¹⁴ Statistics obtained from The Disaster Center (<http://www.disastercenter.com/ohio/crime/9823.htm>, <http://www.disastercenter.com/ohio/crime/10016.htm>, <http://www.disastercenter.com/crime/ohcrime.htm>). AA, Tab 5.

¹⁵ Statistics obtained from The Disaster Center (<http://www.disastercenter.com/ohio/crime/9912.htm>, <http://www.disastercenter.com/ohio/crime/10016.htm>, <http://www.disastercenter.com/crime/ohcrime.htm>). AA, Tab 6.

	Akron		Cleveland		Ohio	
Year	1980	2005	1980	2005	1980	2005
Population	237,005	212,272	572,657	458,885	10,766,808	11,470,685
Murder/Manslaughter	27	27	269	110	871	590
Rape	178	200	703	488	3,696	4,671
Robbery	586	625	6,802	3,744	24,082	18,673
Aggravated Assault	421	433	3,696	2,088	24,997	16,228
Total Violent Crime	1,212	1,285	11,470	6,430	53,646	40,162
Percent of Violent Crimes in Ohio	2.30%	3.20%	21.40%	16.00%	N/A	N/A

This comparison shows that the majority of crimes in Ohio are committed in urban areas. The chart below further supports this. It shows crimes committed in Toledo, Cincinnati, Columbus, and Cleveland in 2005. Cumulatively, the percentage of crimes in just these four cities amounts to half, or 50.01%, of the crimes committed that year in Ohio as a whole.¹⁶ It becomes apparent, therefore, that crime in Ohio's many more rural communities is less pervasive, and that, consequently in those communities there has been less of a call for local firearm regulations than their urban counterparts. Further, while it is logical that smaller communities with less crime may enact fewer firearm ordinances, as demonstrated by the breadth of the Home Rule Amendment, the decision on which firearm ordinances to enact is for those communities to make.

¹⁶ Statistics obtained from The Disaster Center (<http://www.disastercenter.com/ohio/crime/9726.htm>, <http://www.disastercenter.com/ohio/crime/10015.htm>, <http://www.disastercenter.com/ohio/crime/10017.htm>, <http://www.disastercenter.com/ohio/crime/10016.htm>, <http://www.disastercenter.com/crime/ohcrime.htm>). AA, Tab 7.

	Toledo	Cincinnati	Columbus	Cleveland	Ohio
Population	305,107	314,292	719,561	458,885	11,470,685
Murder/Manslaughter	29	79	103	110	590
Rape	179	329	557	488	4,671
Robbery	1,356	2,320	3,810	3,744	18,673
Aggravated Assault	2,162	1,010	1,733	2,088	16,228
Total Violent Crime	3,726	3,738	6,203	6,430	40,162
Percent of Violent Crimes in Ohio	9.27%	9.30%	15.44%	16.00%	N/A

B. Cleveland’s Gun Violence Prevention Regulations

The firearm regulations that Cleveland enacted reflect these statistical realities regarding the prevalence of gun crimes in urban areas. Incorporating its findings in an ordinance regarding the possession or sale of assault weapons, for example, the Cleveland City Council stated:

[T]he proliferation and use of assault weapons is resulting in an ever-increasing wave of violence in the City, especially because of an increase in drug trafficking and drug-related crimes, and poses a serious threat to the health, safety, welfare and security of the citizens of Cleveland. . . . [T]he function of [an assault weapon] is such that any use as a recreational weapon is far outweighed by the threat that the weapon will cause injury and death to human beings. Therefore, it is necessary to establish regulations to restrict the possession or sale of these weapons. Cleveland Codified Ordinance (“C.C.O.”) § 628.01.

In addition, Cleveland has enacted “emergency [firearm] measure[s] providing for the immediate preservation of the public peace, property, health and safety” of Cleveland’s citizens. *See, e.g.*, The City Record, May 8, 2002, Ord. No. 2031-01 to amend C.C.O. § 627.01 relating to the definition of weapons and explosives; The City Record, Feb. 5, 2003, Ord. No. 2393-02 to amend C.C.O. § 674.04 relating to handgun registration.

Recognizing the distinctions between Cleveland and other Ohio cities, the firearm regulations progressively enacted by Cleveland were adapted to provide maximum safety and benefits for its own residents within its boundaries. Although not exhaustive, following is a list of Cleveland's ordinances regulating firearms:

- Using Weapons While Intoxicated (C.C.O. § 627.03)
- Possession of Firearms by Minors (C.C.O. § 627.08)
- Prohibited Weapons on School Property (C.C.O. § 627.082)
- Possessing Deadly Weapons on Public Property (C.C.O. § 627.09)
- Possessing Certain Weapons at or about Public Place (C.C.O. § 627.10)
- Access to Firearms (C.C.O. § 627A.02)
- Registration of Handguns (C.C.O. § 674.05)¹⁷

C. Various Firearm Ordinances As Recognized By Other Jurisdictions

Courts in other jurisdictions have also recognized that urban areas may choose to regulate firearms differently than in rural areas. For example, when considering a local ordinance that required registration of all firearms in San Francisco county, the Supreme Court of California in *Galvan v. Superior Court*, 70 Cal. 2d 851 (1969), explained, “The issue of ‘paramount state concern’ also involves the question ‘whether substantial, geographic, economic, ecological or other distinctions are persuasive of the need for local control, and whether local needs have been adequately recognized and comprehensively dealt with at the state level.’” *Id.* at 864. The Court elaborated, “That problems with firearms are likely to require different treatment in San Francisco County than in Mono County should require no elaborate citation of authority.”¹⁸ *Id.*

¹⁷ A copy of the above referenced ordinances is attached. AA, Tab 8.

¹⁸ Mono County is in California's Eastern Sierra and is a largely rural area. As of the 2000 U.S. census, its population was 12,853 people. In contrast, the 2007 U.S. census reported that San

Recognizing the need to provide additional firearm protections in an urban area, the *Galvan* Court upheld the local ordinance.

The same reasoning was later used in upholding a county ordinance that prohibited the sale of firearms at gun shows on county property. *Great Western Shows, Inc. v. County of Los Angeles*, 27 Cal. 4th 853, 868 (2002). Despite a state statute permitting the type of sale barred by the Los Angeles County ordinance, the Court examined the legislative findings of the ordinance:

[T]he need for the regulation or prohibition of the carrying of deadly weapons, even though not concealed, may be much greater in large cities, where multitudes of people congregate, than in the country districts or thinly settled communities, where there is much less opportunity and temptation to commit crimes of violence for which such weapons may be used. (citation omitted). Thus, the costs and benefits of making firearms more available through gun shows to the populace of a heavily urban county such as Los Angeles may well be different than in rural counties, where violent gun-related crime may not be as prevalent. *Id.* at 867.

Similarly, the City of Denver filed suit when the state of Colorado enacted several preemption statutes. *City and County of Denver v. State of Colorado*, No. 03-CV-3809 (Colo. Dist. Ct. Nov. 5, 2004). AA, Tab 9. In granting the City of Denver declaratory and injunctive relief with regard to several ordinances, the court pointed to the unique characteristics that differentiate Denver from other parts of the state, such as high population density and a high crime rate. The court found that, “[T]hese unique factors predominate over any need for statewide uniformity,” which was originally the purported basis for the preemption statutes. *Id.* at 10. The court also cautioned against preferring uniformity over the wide diversity of municipalities and residents in the state. *Id.* The court said, “simply put, a bullet fired in Denver

San Francisco county is the fourth most populous city in California and the second most densely populated major city in the United States with 799,183 residents.

— whether maliciously by a criminal or negligently by a law-abiding citizen — is more likely to hit something or somebody than a bullet fired in rural Colorado.”¹⁹ *Id.*

Consequently, the firearm regulations that the City of Cleveland chooses to enact to protect its citizens are likely different from those that Zanesville, Akron, or any another Ohio city enact, regardless of whether the community is rural or urban.

D. Nullified Local Firearm Ordinances Will Jeopardize The Safety Of Cleveland’s Residents

Despite the desire and need to regulate locally, section 9.68 expressly eradicates all Cleveland ordinances related to firearm regulations while providing no supplemental state regulations.²⁰ Without any comprehensive state or local regulation of firearms, Ohio residents would effectively be left to their own devices. While this may not present a problem in rural communities with a lower population density whose citizens experience less gun crime, the City of Cleveland is an urban environment whose population is transient and fluctuating, and whose violent crime statistics are among the highest in the state. It needs to determine what regulations will best address these problems.

Disposal of Cleveland’s ordinances could create a dangerous situation for its residents. For example, C.C.O. section 674.05 requires the registration of handguns, an issue that state law does not address. Eliminating requirements to register firearms could result in numerous problems. The presence of firearms, for instance, pose a concern for law enforcement officers

¹⁹ An analogous lawsuit was filed against Denver by the Aurora Gun Club seeking to invalidate the same Denver ordinances, and a similar outcome resulted. *Aurora Gun Club v. City and County of Denver*, No. 03-0CV-8609 (Colo. Dist. Ct. 2004).

²⁰ Although section 9.68 was enacted along with revisions to the state’s concealed carry legislative scheme, the section is not limited to preemption of local concealed carry laws.

responding to incidents of domestic violence.²¹ When Cleveland police receive a domestic violence call, officers are able to compare the address of the call with handgun registrants on file and predetermine whether a firearm is on the scene before responding. Without this ordinance in place, a dangerous situation is made even more unsafe. Registration information also facilitates fast and reliable tracing of crime guns, and reduces illegal firearms sales by creating accountability for gun owners.

Likewise, C.C.O. sections 627.09 and 627.10 outlaw the open carry of handguns and other firearms in public places and buildings.²² As defined by the ordinance, a public place includes “parks, playgrounds, beaches, marinas, courthouses, auditoriums, stadiums, office buildings. . . schools, colleges. . . churches, synagogues and other places of worship.” C.C.O. § 627.09. Removal of this ordinance would permit citizens to openly carry firearms while walking the sidewalks and streets of Cleveland. This would also expose more of Cleveland’s youth, another matter addressed by local legislation through C.C.O. section 627A.02 which prohibits allowing a child access to a firearm. With both ordinances abolished, greater youth access to firearms could increase the rate of accidental and intentional crime within the City.

Moreover, recent statistics demonstrate the importance of continued enforcement of Cleveland’s existing ordinances and future enactment of new firearm regulations:

²¹ An analysis of female domestic homicides (a woman murdered by a spouse, intimate acquaintance, or close relative) showed that prior domestic violence in the household made a woman 14.6 times more likely, and having one or more firearms in the home made a woman 7.2 times more likely, to be the victim of such a homicide. James E. Bailey, *Risk Factors for Violent Death of Women in the Home*, 7 Archives of Internal Med. 157, 777-782 (1997).

²² *Amici* are not commenting on whether such an ordinance regarding zoning would be preempted by the concealed carry legislative scheme.

- In 2006, Cleveland had approximately 15.5 violent crimes per every 1,000 residents, the highest rate compared to any other area in Northeast Ohio.²³
- In 2007, Cleveland experienced 73 homicides with a firearm, 1,411 robberies with a firearm, 670 concealed carry arrests, and 708 gun confiscations.²⁴
- Of the 39 Northeast Ohio homicides that have occurred this year up to March 16, 2009, over 75% took place in Cleveland, the overwhelming majority of which were from gunshots.²⁵

Most significantly, it is not just the safety of Cleveland’s residents that would be jeopardized by the effect of R.C. section 9.68. Numerous ordinances from communities throughout Ohio would be eliminated if R.C. section 9.68 is allowed to stand.

VII. CONCLUSION

Revised Code section 9.68 directly contravenes the policies and intent of the Home Rule Amendment — that municipalities are constitutionally granted the right to exercise local police power and self-govern. The unique breadth of Ohio’s Home Rule Amendment has led to a historically strong presumption of the validity of local ordinances. Local governments should thus continue to be given latitude to regulate firearms in particular because they are so lethal and the few existing federal and state statutes do not effectively address the danger they pose. To allow section 9.68 to stand would defeat the steps that local governments have made to provide for the welfare and safety of their residents. Cleveland, in particular, must be allowed to determine the best way to address the problems that accompany urban life.

Accordingly, *amici curiae* respectfully request this Court to find that the City of

²³ http://www.cleveland.com/pdgraphics/interactive/crime_rates/. AA, Tab 10.

²⁴ http://www.cleveland.com/pdgraphics/interactive/crime07_Pct_change_VIOLENT/. AA, Tab 11.

²⁵ http://www.cleveland.com/datacentral/index.ssf/2009/01/northeast_ohio_homicides.html. See *supra*, AA, Tab 4.

Cleveland and other municipalities can continue to enforce and enact local firearm regulations that do not conflict with general laws.

DATED: March ___, 2009

Respectfully submitted,

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DATED: March ___, 2009

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STATEMENTS OF INTEREST OF *AMICI CURIAE*

AMICUS LEGAL COMMUNITY AGAINST VIOLENCE

Legal Community Against Violence (“LCAV”) is a public interest organization dedicated to providing legal assistance in support of gun violence prevention. Founded by lawyers after an assault weapon massacre at a San Francisco law firm in 1993, Legal Community Against Violence is the country’s only organization devoted exclusively to providing legal assistance in support of gun violence prevention. LCAV tracks and analyzes firearms legislation, as well as legal challenges to firearms laws. LCAV has special expertise in the area of state preemption of local gun regulations and has assisted municipalities around the country in drafting local firearms ordinances to respond to community needs. As an amicus, LCAV has provided informed analysis, including preemption analysis, of the legal bases for a variety of laws to reduce gun violence. *See, e.g., District of Columbia v. Heller*, 554 U.S. ___, 128 S.Ct. 2783 (2008); *Klein v. Leis*, 99 Ohio St. 3d 537, 2003-Ohio-4779, 795 N.E.2d 633 (2003); *Great W. Shows, Inc. v. County of Los Angeles*, 27 Cal. 4th 853 (2002) (preemption at issue); *Ass’n of N.J. Rifle & Pistol Clubs v. City of Jersey City et al.*, 402 N.J. Super. 650 (N.J. Super. Ct. App. Div. 2008) (preemption as issue); *Cal. Rifle & Pistol Ass’n v. City of W. Hollywood*, 78 Cal. Rptr. 2d 591 (1998) (preemption at issue); *Nordyke v. King*, 364 F.3d 1025 (9th Cir. 2004) (preemption at issue), *cert. denied*, 543 U.S. 820 (U.S. Oct. 4, 2004) (No. 03-1707).

AMICUS OHIO COALITION AGAINST GUN VIOLENCE

Ohio Coalition Against Gun Violence (“OCAGV”) is a non-profit organization working to prevent gun violence through education, advocacy, and public awareness. Starting as a volunteer committee in 1995 based on gun violence felt through another organization, the OCAGV expanded to become an entity which supports and encourages local, state, and federal

legislation to increase Ohio's safety with regard to firearms. OCAGV is the recognized organization in the state for current information on gun violence, as well as legislation around violence issues. The Coalition monitors current developments at the national, state and local levels and educates people around the state on non-violence and safety for children and families. OCAGV has provided resources to Ohio municipalities interested in passing local firearm ordinances.

OCAGV has also sponsored programs such as Million Mom March (partnering with mothers to organize events and promote gun safety in Ohio), Straight Talk About Risks (educating children not to touch guns or use guns to settle a dispute), and Gun Lock Giveaways (partnering with local law enforcement to provide locks to area gun owners). LCAV and OCAGV have jointly acted as *amici* for *Klein v. Leis*, 99 Ohio St. 3d 537, 2003-Ohio-4779, 795 N.E.2d 633 (2003).

AMICUS BRADY CENTER TO PREVENT GUN VIOLENCE

The Brady Center To Prevent Gun Violence ("Brady Center") is a non-profit organization dedicated to reducing gun violence through education, research, and legal advocacy. The Brady Center has a substantial interest in ensuring that the Americans, through their elected representatives, can enact the laws they need and want to protect their communities from gun violence. Through its Legal Action Project, the Brady Center has represented the City of Cincinnati in firearms-related litigation, and has filed numerous briefs *amicus curiae* in cases involving the preemption, legality, and constitutionality of gun laws, including in *District of Columbia v. Heller*, 554 U.S. ___, 128 S.Ct. 2783 (2008); *Klein v. Leis*, 99 Ohio St. 3d 537, 2003-Ohio-4779, 795 N.E.2d 633 (2003); and *Nordyke v. King*, 364 F.3d 1025 (9th Cir. 2004) (preemption at issue), *cert. denied*, 543 U.S. 820 (U.S. Oct. 4, 2004) (No. 03-1707).

AMICUS COALITION TO STOP GUN VIOLENCE

The Coalition to Stop Gun Violence (“CSGV”) seeks to secure freedom from gun violence through research, strategic engagement, and effective policy advocacy. Its organizational structure is unique among national gun violence prevention organizations. CSGV is comprised of 45 national organizations working to reduce gun violence. The coalition members include religious organizations, child welfare advocates, public health professionals, and social justice organizations. This diversity of member organizations allows CSGV to reach a wide variety of grassroots constituencies who share its vision of non-violence.

AMICUS STATES UNITED TO PREVENT GUN VIOLENCE

States United to Prevent Gun Violence (“States United”) is an association of independent state-wide gun violence prevention organizations. The purpose of States United is to allow its members to share best practices, programs and legislative ideas in order to work effectively to prevent gun deaths and injuries. The state organizations of States United kicked off a campaign against illegal firearms in May 2006. Many of its organizations are working and will continue the fight to obtain sensible state legislation passed to cut down on the flow of guns from the legal to the illegal market.

AMICUS VIOLENCE POLICY CENTER

The Violence Policy Center (“VPC”), a national tax-exempt 501(c)(3) non-profit organization based in Washington, DC, works to stop the annual toll of death and injury through research, advocacy, and education. The VPC approaches gun violence as a public health issue, advocating that firearms be subject to health and safety standards like those that apply to virtually all other consumer products. Guns and tobacco are the only two consumer products for which there is no federal health and safety oversight. As one of the most aggressive groups in

the gun control movement, the VPC has a record of policy successes on the federal, state, and local levels -- including first revealing the threat posed by gun shows, drastically reducing the number of gun dealers, banning the possession of guns by domestic violence offenders, and exposing gun industry marketing to women and even children. The VPC also works with national, state, and local advocacy organizations representing affected constituencies -- such as women, children, minorities, consumers, and public health practitioners -- to keep our neighborhoods, homes, schools, and workplaces safe from gun violence.

AMICI CITY OF AKRON, OHIO; CITY OF COLUMBUS, OHIO; CITY OF DAYTON, OHIO; CITY OF DUBLIN, OHIO; CITY OF KETTERING, OHIO; CITY OF PARMA, OHIO; VILLAGE OF NEW ALBANY, OHIO; AND CITY OF SHAKER HEIGHTS, OHIO

The Cities of Akron, Columbus, Dayton, Dublin, Kettering, Parma, Shaker Heights, and Village of New Albany have suffered extensive loss of life, threats to the safety and security of residents and law enforcement personnel, disruption to their economies, and massive health care costs associated with gun violence. Each city has enacted firearm regulations to address the particular risks and threats posed by gun violence in its communities. The cities therefore have a critical interest in ensuring that localities retain the flexibility and authority to counter the risks of firearms and to protect public safety through reasonable firearm regulations.