IN THE SUPREME COURT OF OHIO

Case No. 02-585
On Appeal from The Court of Appeals
First Appellate District
Hamilton County, Ohio
Case Nos. C-020012
C-020013
C-020015
C-020021

CHUCK KLEIN, ET AL.,
Plaintiffs-Appellees

v.

SIMON L. LEIS, JR., SHERIFF, ET AL.,Defendants-Appellants

BRIEF OF AMICI CURIAE
IN SUPPORT OF APPELLANTS'
MEMORANDUM IN SUPPORT OF JURISDICTION

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EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This case is of great public interest and concern because the decision of the Hamilton County Court of Appeals striking down long standing laws regarding the carrying of concealed weapons is likely to lead to increased firearms deaths and injuries in the state of Ohio. A study by the Center for Disease Control indicates that Ohio, with its prohibition on carrying of concealed weapons, had lower death rates from both suicide and homicide than did the United States as a whole in every year from 1989 through 1998. National Center for Injury Prevention and Control, State Injury Profile For Ohio 14-15 (2001), http://www.cdc.gov/ncipc/StateProfiles/sip_oh.pdf. From 1989 to 1998, Ohio had an annual average of 10.1 deaths per 100,000 population by firearms, while for the United States as a whole the comparable figure was 13.7. The only county in Ohio which had a firearms death rate higher than the 75th national percentile was a county contiguous to Pennsylvania, a state which permits concealed carrying of weapons. Id. at 19. Thus, the elimination of this important statutory safeguard to public health presents an immediate and substantial danger to the citizens of Ohio.

While many who wish to carry concealed weapons are law-abiding citizens, many others are not. Data from Texas indicates that during the first four and one-third years after that state began to permit concealed carrying of handguns, 3,370 license holders were arrested for crimes, including 23 charges of murder or attempted murder, 60 arrests for rape or sexual assault and 183 cases of alleged assault or aggravated assault with a deadly weapon. Violence Policy Center, License to Kill III: The Texas Concealed Handgun Law's Legacy of Crime and Violence 2-3 (August 2000), http://www.vpc.org/graphics/ltk3.pdf.

Gun violence has become a major public health issue. In August 2001, Dr. Richard F. Corlin, President of the American Medical Association stated: "Gun-related deaths and injuries have reached epidemic proportions in this nation. And this epidemic has become so serious - that it is clearly a threat to the public health. This is not a political statement or argument. This is a fact." Richard F. Corlin, MD, What We Don't Know Is Killing Us: The Need For Better Data About Firearm Injuries And Deaths, National Academy of Sciences, Committee on Law and Justice (Aug. 30, 2001), http://www.ama-assn.org/ama/pub/article/1752-5255.html.

It is precisely in areas such as this, where difficult interpretations of statistical studies are required, that the legislature, through its ability to hold public hearings unconstrained by the rules of evidence, is better able than the courts to fashion sound public policy. This was recognized by this Court in *Arnold v. Cleveland*, 67 Ohio St. 3d 35, 48 (1993), when it held that unless there is "clear and palpable abuse," the courts will defer to the judgment of the legislature in determining whether a particular regulation of firearms is constitutional as a reasonable exercise of the police power.

The existing state prohibition on carrying concealed firearms is entitled to the same deference articulated by the *Arnold* Court. Instead, the Court below failed to apply the "clear and palpable abuse" standard, or any other proper rule of judicial review. As a result, it wrongly overturned the current concealed carry prohibition, interfered with the ongoing legislative and political process regarding firearm safety, and set a dangerous precedent for such unwarranted intrusions in the future on any number of issues.

This is not a case where the legislature has been unresponsive to its constitutional obligations. *See e.g. DeRolph v. State*, 78 Ohio St. 3d 193 (1997). Legislators have actively carried out their duty to reasonably exercise the police powers of the state. As the noted

constitutional scholar John Hart Ely has stated, so long as the political system is not "systemically malfunctioning," our elected representatives, not the courts, should make value judgments. The political system is not malfunctioning "simply because it sometimes generates outcomes with which we disagree, however strongly." Ely, *Democracy and Distrust*, 102-03 (Harvard Univ. Press, 1980). The Hamilton County Court of Appeals opinion involves unconstitutional judicial activism that aborts the legislature's role in determining what is "reasonable regulation."

The Amici Curiae represent a diverse group of citizens in favor of maintaining Ohio's ban on the carrying of concealed firearms. The Ohio Coalition Against Gun Violence is a statewide organization dedicated to the reduction and prevention of gun violence. The Ohio Legal Professionals Task Force is comprised of lawyers and law professors sopporting efforts to reduce gun related injuries and deaths through appropriate legal means and was formed under the auspices of the Firearms Law Center, a national project of amicus Legal Community Against Violence. The Ohio Council of Churches is composed of seventeen organizations dedicated to the pursuit of social justice. The Legal Community Against Violence educates local communities as a means to reduce gun related injuries and deaths. The Physicians For Social responsibility is a national organization dedicated to stemming the epidemic of gun violence. The Educational Fund to Stop Gun Violence strives to educate the general public and policymakers about the issue of gun violence, and participates in legal advocacy to attain this objective. The Northeast Lakes Council of the Union of American Hebrew Congregations represents sixty Reform Jewish congregations in Ohio and the Midwest.

STATEMENT OF THE CASE

Plaintiff-Appellees filed a complaint in the Court of Common Pleas, Hamilton County on July 17, 2000 seeking injunctive relief and a declaratory judgment. Additional Plaintiffs filed a similar action on October 16, 2001. The cases were consolidated and tried beginning on November 29, 2001. The trial court, having already granted Plaintiff-Appellees' motion for injunctive relief, ruled that R.C. 2923.12 and 2923.16(B) and (C) were unconstitutional. *See* Exhibit A. The First District Court of Appeals issued an opinion on April 10, 2002 in which it affirmed the ruling of the trial court. *See* Exhibit B. An emergency stay pending appeal, motion for immediate stay and expected ruling were granted by this Court on April 25, 2002.

STATEMENT OF THE FACTS

Three plaintiffs appeared at the trial each claiming the need to carry a concealed weapon for personal defense. None of them were in custody for violating the statute in question nor under present threat of prosecution. All were simply requesting a declaratory judgment that Ohio's concealed weapons prohibition was unconstitutional.

PROPOSITION OF LAW NO. 1

I. The Opinion of the Court Below Is Inconsistent With The Established Law Of Ohio Regarding The Constitutionality of Statutes Prohibiting The Carrying Of Concealed Weapons.

From the dawn of the 20th century, this Court has consistently upheld laws prohibiting the carrying of concealed firearms. *See State v. Hogan*, 63 Ohio St. 202 (1900). In *Hogan*, the defendant, a "tramp" as that term was defined by the statute then in force (R.S. § 6995), had been arrested for threatening bodily harm to another while carrying a firearm

concealed on his person. The trial court ordered the defendant released, and the state appealed. *Id.* at 202-3.

The state argued that the law was a reasonable public safety measure. Moreover, the statute did not impermissibly infringe upon the individual's right to bear arms as guaranteed by the U.S. and Ohio Constitutions. Rather, it was a valid exercise of the state's police power.

This Court agreed. Justice Spear, writing for a unanimous Court, declared, " A man may carry a gun for any lawful purpose, for business or amusement, but he cannot go about with that or any other dangerous weapon to terrify and alarm a peaceful people." *Id.* at 219. Neither the Second Amendment nor its Ohio counterpart were offended by a statute designed to "secure the repose and peace of society." *Id*. at 220. Thus, over one-hundred years ago, this Court employed a rational basis test in upholding an early version of Ohio' s prohibition against the carrying of concealed firearms.

Twenty years later, this Court took a second opportunity to sustain a similar statute. *See State v. Nieto*, 101 Ohio St. 409 (1920). The defendant had been arrested in the company bunkhouse after threatening bodily harm to a company cook. While being taken into custody, a revolver had fallen out his pocket. Nieto was subsequently charged with carrying a concealed weapon in violation of G.C. § 12819. The jury acquitted him, following the trial judge's instruction that if the defendant had been arrested in his "home," there could have been no crime as a matter of law. *Id.* at 409-10.

This Court reversed. The Court, with one justice dissenting, determined that the statute "does not operate as a prohibition against the carrying of weapons, but as a regulation of the manner of carrying them. The gist of the offense is the concealment." *Id*. at 414. Specifically citing *Hogan*, the Court added that the U.S. Bill of Rights "was never intended as a warrant for

vicious persons to carry weapons with which to terrorize others." *Id. citing Hogan, supra*, at 218-9. The Court then concluded that the statute was a valid exercise of the state police power under the U.S. and Ohio Constitutions. Accordingly, the law permitted the state to prohibit the carrying of concealed weapons *even in the home*. *Id.* (emphasis added).

More recently, the Court has reviewed a municipal ordinance prohibiting the purchase, sale, possession or display of firearms defined as "assault weapons." *See Arnold v. City of Cleveland*, 67 Ohio St.3d 35 (1993). In *Arnold*, this Court explicitly declared that the defendant City could effectively prohibit the introduction of assault rifles, such as the AK-47, from the streets of Cleveland. The Court began its analysis by stating the oft-quoted maxim that courts must presume "the constitutionality of lawfully enacted legislation." *Id.* at 38 (citations omitted). A plaintiff must also establish that the statute is unconstitutional "beyond a reasonable doubt." *Id.* at 39. The *Arnold* plaintiffs had sought a declaratory judgment that the City's ordinance was unconstitutional as violating both the Second Amendment and the Supremacy Clause of the U.S. Constitution. *Id*. at 40.

The *Arnold* Court rejected plaintiffs' arguments. Cleveland's ordinance did not violate either section of the U.S. Constitution. Moreover, while Section 4, Article I of the Ohio Constitution conferred upon the citizens of this state the "fundamental right" to bear arms for the defense of self, country and property, "this right is not absolute." *Id*. at 46. Significantly, the Court intimated that *only* a total ban on *all* firearms would violate the Ohio Constitution. *Id.*

A reasonable restriction imposed pursuant to the police power conferred by the Ohio Constitution will be upheld provided the statute or ordinance is reasonable, i.e. promotes the "welfare and safety' of the populace. *Id.* at 47-8, *citing Mosher v. Dayton*, 48 Ohio St.2d 243, 247-8 (1976). Indeed, plaintiffs must show that a general law or ordinance embodies a

"clear and palpable abuse of power," a very high standard to meet. Accordingly, Cleveland's ordinance was constitutional. *Id.* at 49.

Thus, for the third time in almost a century, the Court upheld a gun restriction on the grounds that the statute or ordinance was reasonable. One can only conclude, therefore, that a rational basis test is appropriate when evaluating laws regulating the carrying of concealed firearms.

In the case at bar, the Court of Appeals erred in upholding the trial court's decision to strike down R.C. 2923.12 (the lineal statutory descendant of R.S. 6995) and R.C. 2923.16(B) and (C). The Court of Appeals erred because plaintiffs in the court below failed to overcome the presumption of constitutionality cloaking statutes such as these. Fundamentally, they did not show beyond a reasonable doubt that the statutes are unconstitutional, i.e. a clear and palpable abuse of power. Rather, they simply demonstrated that if they were arrested for carrying concealed weapons, they would have to prove that they were entitled to do so under the law.

These statutes are proper exercises of the state's police power. They address in a reasonable and very clear manner a problem endemic throughout the state- persons armed with dangerous weapons, such as firearms, with no need to carry them at all. The defendants' testimony at trail demonstrated in unequivocal fashion that the problem is as pervasive in the more rural areas of the state compared with densely populated areas, such as Cincinnati. It defies logic for an appeals court to posit, as did the First District, that measures taken by the Ohio legislature and local municipalities will offend the Federal or Ohio Constitutions.

PROPOSITION OF LAW NO. 2

II. The Court Below Erred In Holding The Affirmative Defenses Provided For In R.C. 2923(B) And (C) Create A Presumption Of Guilt.

The Court of Appeals erred by implicitly adopting the dissenting opinion of Justice Wanamaker in *Nieto, supra,* at 417. The dissent was based upon his belief that an affirmative defense to the charge of carrying a concealed weapon was insufficient to save the statute from constitutional infirmity. *See Nieto*, 101 Ohio St. at 429. Judge Wanamaker argued that subjecting an individual to arrest before permitting him to assert an affirmative defense made the law unconstitutional. He wrote, "[The defendant] must be subjected to the humiliation of an indictment; he must employ counsel, bear the expense of a trial, and defend as against an act of the Legislature[,] though in the exercise of a right which the Constitution clearly... gives him." *Id*.

The *Nieto* majority rejected this reasoning, commenting that the defense had not been raised in the court below. *Id.* at 417. Moreover, nearly one-hundred years later, the *Arnold* Court cited *Nieto* with approval. Thus, contrary to the First District's assertion, *Arnold* does not supercede *Nieto*; rather, the two cases are complimentary. The teaching of both is clear: The police power may override an individual's right to bear arms provided there is a rational basis underlying the statute. Accordingly, the Revised Code sections at issue, which are founded upon the need to ensure the public safety, are constitutional.

The affirmative defense addressed by the *Nieto* Court is incorporated into R.C. 2923.12(C). Moreover, R.C. 2923.12(B) states that the concealed weapon ban does not apply to peace officers or military personnel performing their duties. Fundamentally, 2923.12 provides a reasonable excuse for those who carry a concealed firearm for legitimate reasons. It is

contradictory to both common sense and the clear intent of the Ohio legislature to hold, as the First District did, that the affirmative defenses created in these provisions create a presumption of guilt.

The well-established law of Ohio with regard to affirmative defenses is clear: They provide a legal excuse for conduct admitted as unlawful. *See State v. Frost*, 57 Ohio St.2d 121 (1979). In *Fros*t, the defendant had been convicted for selling stock without a broker's license. In the words of this Court, the defendant then "sought to avoid criminal liability... by claiming the protection of the [statutory] exemption." *Id*. at 127. It was incumbent upon the defendant to demonstrate his entitlement to the exemption through a preponderance of the evidence.

Significantly, the Court determined that requiring the defendant to make this showing did not offend the Due Process Clause of the 14th Amendment. This Court stated emphatically, "It is not unconstitutional to require a defendant to carry this burden of proof in such a case." *Id.* The Court has adopted similar views with other affirmative defenses. *See State v. Martin*, 21 Ohio St. 3d 91 (1986); *accord, State v. Rhodes*, 63 Ohio St.3d 613 (1992). Thus, inconvenience and economic loss attendant to an arrest, followed by the successful assertion of one of the affirmative defenses provided by the statutes, are not enough to render these public safety provisions unconstitutional.

In this case, the First District erred in holding that the defenses afforded by R.C. 2923.12 create a presumption of guilt. Instead, they operate to excuse the conduct alleged by the state. Plaintiff-Appellees below showed this to be true by their own experience: Patrick Feely was found not guilty because he had a legitimate reason for carrying a concealed firearm, a defense afforded by R.C. 2923.12.

PROPOSITION OF LAW NO. 3

III. The Court Below Erred In Holding That R. C. §2923.12 and R. C. §2923.16(B)And (C) Were Unconstitutionally Vague On The Basis That The Court Below Misapplied The "Void For Vagueness" Doctrine As Set Forth And Applied By This Court.

The court below has erroneously ruled that R.C. §2923.12 and R.C. §2923.16(B) and (C) are unconstitutionally vague. In doing so, the Appellate Court's decision threatens to undermine a broad array of long-accepted legislative enactments which utilize similar terms and require similar analysis in their application. More specifically, the court below held that the use of terms such as "prudent person," "lawful purpose," "reasonable cause," and "particularly susceptible," rendered the statutes unconstitutionally vague.

This court, however, made it abundantly clear in *State v. Anderson*, 57 Ohio St.3d 168 (1991), that the use of interpretive statutory language is constitutionally permissible. In *Anderson*, the Ohio Supreme Court overturned an Appellate Court decision which had ruled that Ohio's vicious dog statute was unconstitutionally vague due to the statute's definition of the term "vicious dog." The lower court held that this definition was unconstitutionally vague because it referred to "pit bulls," yet there was no identifiable breed of dog known as a "pit bull dog." This Court stated:

> Appellee claims that R.C. §955.11(A)(4)(a)(iii) is unconstitutionally void for vagueness. In order to prove such an assertion, the challenging party must show that the statute is vague "not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard conduct is specified at all. . . . In other words, the challenger must show that upon examining the statute, an individual of ordinary intelligence would not understand what he is required to do under the law. Thus, to escape responsibility under R. C. §955.11(A)(4)(a)(iii), appellee must prove, beyond a reasonable doubt, that the statute was so unclear that he could not reasonably understand that it prohibited the acts in which he engaged.

(Emphasis added).

This court further stated, "occasional doubt or confusion about the applicability of a statute does not render the statute vague on its face." Furthermore,

> To be enforceable, legislation need not be drafted with scientific precision. . . . Upholding a state statute against a vagueness challenge, the United States Supreme Court, in *Boyce Motor Lines v. The United States* (1952), 342 U.S. 337, 340, 72 S.Ct. 329, 331, 96 L.Ed. 367 stated that since "* * * few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. . . . See, also, *Ferguson v. Estelle* (C.A. 5, 1983), 718 F.2d 730, 734 ("* * *") [t]here are inherent limitations in the precision with which concepts can be conveyed by the English language * * *".

The decision in *Anderson* therefore makes it abundantly clear that the need for interpretation of a statute's terms does not render the statute unconstitutionally vague. Uncertainty is not enough to render a statute unconstitutional. *Edgerson v. Cleveland Electric Illuminating Co*., 28 Ohio App.3d 24 (Cuyahoga Cty. 1985). Neither is a statute vague because it may be difficult to determine whether marginal cases fall within its scope. *U.S. v. Midwest Fireworks Mfg. Co., Inc.*, 248 F.3d 563 (6th Cir. 2001). Rather, the essence of statutory drafting is notice. *Singer v. City of Cincinnati*, 57 Ohio App.3d 1 (Hamilton Cty. 1990). Only where a statute is so vague that the average person has no notice of what conduct is prohibited, does that statute potentially run afoul of the constitution. *State v. Wilcox*, 10 Ohio App.3d 11 (Delaware Cty. 1983). *See also State v. Tanner*, 15 Ohio St.3d 1 (1984).

The court below, however, relied upon the possibility of variation in results in different cases to justify a finding that the statutes were vague. The court viewed such results as

"the vagaries of what a random judge or jury might find reasonable," and then likened such variation to be "a foundation of quicksand."

It is well-recognized and accepted that virtually all statutes require some interpretation, and are subject to some variation whether by law enforcement officials, prosecutors, judges, or juries. *Accord Anderson*. Until now, the courts have rightly refused to impose a linguistically impossible burden on the state legislature to utilize language that is mathematically precise and not subject to any variation in its interpretation. The Appellate Court's ruling in this case imposes such a burden and thereby threatens to eviscerate a wide range of statutes. Thus to allow the decision of the Appellate Court to stand unchallenged will do substantial harm to Ohio's judicial system by undermining the authority of the state legislature, as well as reliance upon judges and juries as the finders of fact.

PROPOSITION OF LAW NO. 4

IV. The Court Below Erred In Holding That R.C. §2923.12 Was Unconstitutional Based Upon The Manner In Which Other Unrelated Statutes, Specifically R. C. §2917.31 and R. C. §2917.11 Are Allegedly Applied In A Particular Jurisdiction.

The Court below found that R. C. §2923.12 and R.C. 2923.16(B) and (C) "became" unconstitutional because of the manner in which other unrelated statutes were allegedly applied by local law enforcement officers in one jurisdiction. More specifically, the Court determined that the concealed weapons statutes became a ban on possession of all guns because certain law enforcement officers allegedly relied upon R. C. §2917.31 (relating to inducing panic) and R. C .§2917.11 (relating to disorderly conduct), to arrest persons who were openly carrying a firearm. First, this analysis was inappropriate since the Appellees had only asserted a facial challenge to the concealed weapons statutes. No one asserted a challenge to these or the other statutes "as applied."

More importantly, this analysis threatens every law in Ohio. To hold that one law under review is unconstitutional because another unrelated law may be subject to a misapplication, proves too much. It creates an unfounded pretext for rendering a statute unconstitutional, based on the possibility of the misapplication of some other unrelated statute. This is completely at odds with the accepted method of judicial review which limits a reviewing court to addressing only the written content of the specific statute before it. For example, a court may not read any words into a statute which are not actually contained in it, *State ex rel McDulin v Industrial Commission*, 89 Ohio St.3d 390 (2000), nor may a court delete any words actually contained in the statute either. *State v. Hughes,* 86 Ohio St.3d 424 (1999); *Elder v. Fischer*, 129 Ohio App.3d 209 (Hamilton Cty. 1998); *State v. Patterson,* 128 Ohio App.3d 174 (Hamilton Cty. 1998). In addition, a court must sever and strike only those portions of a statute which are found to be unconstitutional. R.C. § 1.50; *See also Geiger v. Geiger*, 117 Ohio St. 451 (1927). Finally, a court has an obligation to reconcile the separate parts of a statute so as to render the statute constitutional. R.C. § 1.52.

Obviously if a court is obligated to strike only that part of a statute which is unconstitutional, this same approach should apply when looking at a statute as a whole. That is, the particular statute being scrutinized should be analyzed separate and apart from other unrelated statutes. Here, however, the Appellate Court went completely beyond the statute, reaching out to and embracing the mere possibility of a misapplication of other, unrelated statutes to justify a finding of unconstitutionality. If the Appellate Court was concerned with the manner in which R. C. §2917.31 and R. C .§2917.11 were applied, then the Court should have restricted itself to dealing with those particular statutes.

Instead, the Court below found that the unintended effect of the concealed weapons statutes, when combined with the alleged manner of enforcement of the other statutes, created an unconstitutional infringement on the claimed right to bear arms. However, the fact that a statute may have unintended consequences, does not make a statute unconstitutional. *Serenity Recovery Homes, Inc. v. Somani*, 126 Ohio App.3d 494 (Mahoning Cty. 1998); *State Ex Rel Nimburger v. Bushnell*, 95 Ohio St. 203 (1917). If the consequences of a statute are objectionable, but the terms of the statute are not, then the change must come from the legislature and not the judiciary. *Austintown Township Board of Trustees v. Tracy*, 76 Ohio St.3d 353 (1996); *Columbus Building & Construction Trades Council v. Moyer*, 163 Ohio St. 189 (1955); *Weibel v. Poda*, 116 Ohio App. 38 (Summit Cty. 1962). This rule does not change when there are separate statutes involved. When the alleged unintended consequences arise from the interaction of two separate statutes, the claim of unconstitutionality is tenuous. And when the unintended effect is due simply to the manner in which one of the statutes is allegedly applied, there can be no claim of unconstitutionality.

Any other result would impose an impossible burden on the state legislature when drafting new laws. The state legislature would be forced to assess not only the language of the proposed statute, but every other statute already in place. It would then be forced to further assess how all of the other existing statutes were or might be applied and then determine whether there might be an unintended infringement on some claimed constitutional right when combined with the proposed new law. This has not been nor should it be the obligation of the state legislature. The Court below, by imposing such a burden, impermissibly interfered with the legislative process and violated the separation of powers. As such, this decision cannot be permitted to stand.

PROPOSITION OF LAW NO. 5

V. The Decision Of The Court Below Constitutes An Unwarranted Interference With The Legislative Process And A Violation Of The Separation Of Powers.

It is the state legislature which is charged with the obligation to make factual assessments, formulate policy, and enact statutes which the people believe are the appropriate way to carry out these policies. That a statute may be unwise or may not be the best means of achieving a particular public policy is not for a court to decide. In order to preserve and protect this legislative authority, the separation of powers requires that the judiciary to defer to the legislature. Ohio Constitution, Art. 2 Sections 1, 32; Art. 4, Section 1. Courts therefore recognize a strong presumption of constitutionality associated with every statute. A reviewing court must also construe every legislative enactment so as to sustain its constitutionality if at all possible. *State v. Collier*, 62 Ohio St.3d 267 (1991). This presumption of constitutionality may only be overcome by proof of unconstitutionality beyond a reasonable doubt. *State v. Anderson*, 57 Ohio St.3d 168 (1991).

The legislature of the State of Ohio has determined and continues to consider the extent to which the carrying of concealed firearms should be permitted for the defense and security of the citizens of the State of Ohio. By doing so, the legislature has demonstrated that this subject matter is a proper topic for public consideration *i.e.*, the state legislature should be the governmental body which determines the circumstances under which guns may or may not be carried. The Trial and Appellate Courts, by immersing themselves in this legislative process, conducting legislative-like fact-finding, and castigating the legislature's reasonable basis for enacting these laws, violated the separation of powers. The courts below would have done well to remember that "each of the three grand divisions of the government, must be protected from

the encroachments of the others, so far that its integrity and independence may be preserved." *South Euclid v. Jemison*, 28 Ohio St.3d 157 (1986) quoting *Fairview v. Giffee*, 73 Ohio St. 183 (1905).

As the legislature is actively engaged in establishing the parameters of permissible conduct with respect to firearms, the decisions of the courts below constitute an improper invasion of the legislative process. Such conduct is not justified given the legislature's compliance with its own constitutional obligation to legislate. *DeRolph v. State*, 78 Ohio St.3d 193 (1997). Therefore, this Court should accept for review and overturn the decision of the Court below. Otherwise this decision will not only impede the proper exercise of legislative power in the field of firearms safety, but it will also serve as a predicate for such invasions in the legislative process in every other field of public interest now and in the future.

CONCLUSION

For all of the foregoing reasons, this case presents issues of great general and public interest. Accordingly, Amici Curiae Ohio Coalition Against Gun Violence, Ohio Legal Professionals Task Force, Ohio Council Of Churches, Legal Community against Violence, Physicians For Social Responsibility, Educational Fund To Stop Violence, and Northeast Lakes Council of the Union Of American Hebrew Congregations, respectfully urge this Court to accept jurisdiction of this case and reverse the order of the Appellate Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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