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**In The Supreme Court of Ohio**

**Case No. 2009-2280**

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APPEAL FROM THE COURT OF APPEALS  
EIGHTH APPELLATE DISTRICT  
CUYAHOGA COUNTY, OHIO  
CASE NO. 92663

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CITY OF CLEVELAND  
*Plaintiff-Appellee*

v.

STATE OF OHIO  
*Defendant-Appellant*

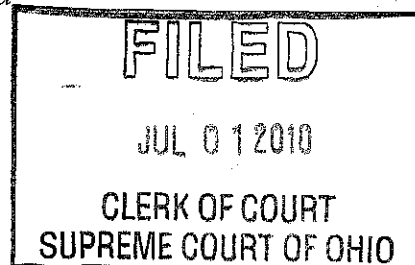
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**BRIEF OF *AMICUS CURIAE* CITY OF ENGLEWOOD  
IN SUPPORT OF PLAINTIFF-APPELLEE CITY OF CLEVELAND**

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## **INTRODUCTION**

The primary issue in this appeal is whether or not R.C. 9.68 is a “general law.” This statute came into law in Ohio on March 14, 2007, and states in pertinent part as follows:

### **9.68 Right of individual to possess firearm**

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

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

(C) As used in this section:

(1) The possession, transporting, or carrying of firearms, their components, or their ammunition include, but are not limited to, the possession, transporting, or carrying, openly or concealed on a person's person or concealed ready at hand, of firearms, their components, or their ammunition.

(2) “Firearm” has the same meaning as in section 2923.11 of the Revised Code.

(D) This section does not apply to either of the following:

(1) A zoning ordinance that regulates or prohibits the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for residential or agricultural uses;

(2) A zoning ordinance that specifies the hours of operation or the geographic areas where the commercial sale of firearms, firearm components, or ammunition for firearms may occur, provided that the zoning ordinance is consistent with zoning ordinances for other retail establishments in the same

geographic area and does not result in a de facto prohibition of the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for commercial, retail, or industrial uses.

The General Assembly enacted R.C. 9.68 as a component of Sub. H. B. No. 347, which was entitled “Firearms—Concealed Carry Licenses.” Sub. H. B. No. 347 was passed over the Governor’s veto in the House on December 7, 2006, and over the Governor’s veto in the Senate on December 12, 2006. Sub. H. B. No. 347 enacted R.C. 9.68, and also amended 22 other sections of the Ohio Revised Code relating to concealed carry and concurrent penalty provisions.

The City of Cleveland, (the “City” or “Cleveland”) challenged the constitutionality of R.C. 9.68 as a violation of its home rule powers. Essentially, the City has argued that R.C. 9.68 is unconstitutional because it is not a general law and attempts to curtail the City’s home rule powers under § 3, Article XVIII of the Ohio Constitution. The Eighth District Court of Appeals (the “Court of Appeals”) agreed with Cleveland and concluded R.C. 9.68 is unconstitutional in part because it is not a “general law” as defined by this Court in *Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963. *City of Cleveland v. State of Ohio*, 185 Ohio App.3d 59, 2009-Ohio-5968, 923 N.E.2d 183, (Ohio App. 8 Dist.).

In *Canton*, this Court established a four-part test for determining what constitutes a “general law.” Specifically, in *Canton* this Court ruled that a general law must (1) be part of a “statewide and comprehensive legislative enactment,” (2) “apply to all parts of the state alike and operate uniformly throughout the state,” (3) establish “police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations,” and (4) “prescribe a rule of conduct upon citizens generally,” (the “*Canton* test”). *Canton*, supra at syllabus. The Court of



Appeals concluded R.C. 9.68 does not satisfy the first and third prongs of the *Canton* test and, therefore, ruled the statute is unconstitutional.

The Court of Appeals concluded R.C. 9.68 does not satisfy the first prong of the *Canton* test because it is not part of a statewide and comprehensive legislative enactment. Examining R.C. 9.68 in the context of Sub. H.B. No. 347, the court concluded it is not comprehensive and leaves a large amount of firearms activity unregulated. *Cleveland v. State of Ohio*, 185 Ohio App.3d at 65, 923 N.E.2d at 188. The Court of Appeals furthermore concluded R.C. 9.68 does not satisfy the third prong of the *Canton* test because it does not establish police regulations and instead simply limits the legislative power of municipal corporations to do so. *Id.*, 185 Ohio App. 3d at 66, 923 N.E.2d at 189.

In its appeal to this Court, the State of Ohio argues the foregoing conclusions by the Court of Appeals are incorrect because it believes R.C. 9.68 is part of a “comprehensive regime that touches every facet of gun ownership and possession in Ohio.”<sup>1</sup> The State of Ohio identifies approximately 28 additional statutes above and beyond R.C. 9.68 where Ohio law addresses firearms, namely statutory provisions that regulate: (1) where firearms may be possessed;<sup>2</sup> (2) prohibitions as to the discharge of firearms;<sup>3</sup> (3) what individuals are disqualified from possessing firearms and certain handling requirements;<sup>4</sup> (4) certain firearm-related

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<sup>1</sup> State of Ohio Merit Brief, p. 11.

<sup>2</sup> R.C. 1547.69 (vessels); R.C. 2921.36 (detention and mental health facilities), R.C. 2923.121 (liquor establishments); R.C. 2923.122 (school zones); R.C. 2923.123 (courthouses). State of Ohio Merit Brief, p. 3.

<sup>3</sup> R.C. 1541.19 (state parks); R.C. 2902.08 (airports); R.C. 2923.16 (motor vehicles); R.C. 2923.161 (habitation areas); R.C. 2923.162 (schoolhouses, churches, charities, public roads). State of Ohio Merit Brief, p. 3.

<sup>4</sup> R.C. 2923.13 (felons and incompetents); R.C. 2923.15 (individuals under the influence); R.C. 2923.211 (minors); R.C. 2923.11(E)(K) and R.C. 2923.17 (banning certain weapons such as automatic weapons, sawed-off firearms, etc.); R.C. 2923.201 (banning defacement of

“specifications” in Ohio’s criminal sentencing laws;<sup>5</sup> and (5) the complex licensing procedure for concealed-carry handgun owners.<sup>6</sup> The State of Ohio also notes that Ohio’s firearm laws incorporate federal firearm laws involving: (1) license qualifications for firearm dealers;<sup>7</sup> (2) mandatory national background checks for firearm purchasers;<sup>8</sup> and (3) prohibitions against people with certain disabilities from possessing firearms.<sup>9</sup> Essentially, the State of Ohio argues that any and all Ohio and federal firearms regulations, whether statutory, constitutional, civil, criminal, administrative, or procedural, wherever and whenever codified, should all be examined together, and as such they constitute the requisite statewide and comprehensive legislative enactment necessary to satisfy the first prong of the *Canton* test.

The State of Ohio makes essentially the same argument in support of its claim that R.C. 9.68 satisfies the third prong of the *Canton* test as well. According to the State of Ohio, “R.C. 9.68 is one component of a comprehensive regulatory plan that promulgates a litany of police and safety regulations pertaining to firearms.”<sup>10</sup> By virtue of the approximately 28 referenced statutes and regulations located throughout different chapters, titles, and sections of the Ohio

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identification marks); R.C. 2923.22 (authorizing interstate firearm transactions); R.C. 2923.25 (specifying the requirement for locking devices). State of Ohio Merit Brief, p. 3.

<sup>5</sup> R.C. 2941.141(one-year general firearm specification); R.C. 2941.144 (six-year specification for use of automatic firearms); R.C. 2941.145 (three-year specification for display or brandishing firearm); R.C. 2941.146 (five-year specification for discharging firearm from motor vehicle); R.C. 2941.1412 (seven-year specification for discharging firearm at police or corrections officer). State of Ohio Merit Brief, p. 4.

<sup>6</sup> R.C. 2923.125, R.C. 2923.126. State of Ohio Merit Brief, p. 5.

<sup>7</sup> 18 U.S.C. §§ 922(a), 923; State of Ohio Merit Brief, p. 4.

<sup>8</sup> Id., § 922(g), (t); State of Ohio Merit Brief, p. 4.

<sup>9</sup> Id.

<sup>10</sup> State of Ohio Merit Brief, p. 16.

and federal codes, the State of Ohio argues that they certainly must do more than merely “restrict the ability of a municipality to enact legislation.”<sup>11</sup>

As will be discussed below, however, the analysis and conclusions reached by Cleveland and the Court of Appeals are more persuasive than the arguments posed by the State of Ohio. Consequently, the Court of Appeals’ finding that R.C. 9.68 is not a general law under the *Canton* test should be affirmed.

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

The *amicus curiae* submitting this brief is the City of Englewood, Ohio (“Englewood”). Englewood is an Ohio charter municipal corporation with approximately 20,359 citizens according to the 2000 census.<sup>12</sup> Although a relatively small municipal corporation compared to Cleveland, Englewood has also been directly affected by R.C. 9.68 and the uncertainty it has inadvertently created in the area of firearms regulation in Ohio. Englewood submits this brief in support of Cleveland’s position and the decision reached by the Court of Appeals because Englewood agrees R.C. 9.68 cannot be considered a general law, and consequently it has perhaps created more harm than the intended good in resolving the rights and responsibilities of Ohio citizens who decide to exercise their rights to carry firearms.

Although Englewood believes R.C. 9.68 is not a general law, it wants to acknowledge from the outset that it recognizes and respects its citizens’ inherent rights to bear arms for their defense and security under § 4, Article I of the Ohio Constitution. Nor does Englewood disagree with this Court’s ruling in *Ohioans for Concealed Carry v. Clyde* 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, that R.C. 2923.126 constitutes a “general law” under the

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<sup>11</sup> State of Ohio Merit Brief, p. 15.

<sup>12</sup> See, City of Englewood official website: [http://www.inglewood.oh.us/useful\\_info.htm](http://www.inglewood.oh.us/useful_info.htm).

*Canton* test. “In Ohio, the right to bear arms is fundamental and is also subject to limitations.” *Klein v. Leis*, 99 Ohio St. 3d 537, 539, 2003-Ohio-4779, 795 N.E.2d 633, 637. Englewood believes the constitutional dilemma caused by R.C. 9.68, however, is that it fails to provide Ohio municipalities with the necessary guidance to be able to balance the fundamental right to bear arms with the limitations that have been recognized and enforced by this Court in years past. *Id.*

This dilemma is well-illustrated by a real-life situation faced by Englewood involving its attempted interpretation and good faith compliance with R.C. 9.68, which has precipitated Englewood’s personal interest in this appeal.<sup>13</sup> In August of 2007, an Englewood citizen named Mr. Kent Maynard attended the annual Englewood Arts Festival at the city’s Centennial Park. The Englewood Arts Festival is well attended and many local organizations participate in the planned activities, including but not limited to the local schools. At the time Mr. Maynard attended the Englewood Arts Festival, he was openly carrying a loaded firearm in a gun holster on his side. Mr. Maynard was approached at the time by an Englewood employee who advised him firearms were not allowed in the park. Mr. Maynard disputed this prohibition and articulated his belief that he possessed a constitutional right to openly carry his firearm in the park under R.C. 9.68.

After Mr. Maynard’s dialog with the city employee, Englewood police officers responded to the park. These officers approached Mr. Maynard and spoke with him concerning

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<sup>13</sup> The factual circumstances relevant to Englewood’s experience are obviously not directly related to this appeal and cannot be supported by references to the record below. They are provided solely to provide an illustration of a real-life situation involving an attempted good faith application of R.C. 9.68. Should this Court be interested, the facts and circumstances related herein are fully set forth in the pleadings and motions filed in the case captioned *Maynard v. City of Englewood, et al.*, Montgomery County Common Pleas Court Case No. 2009 CV 02278, which can be accessed at the Montgomery County Common Pleas Clerk’s website at the following address: <http://www.clerk.co.montgomery.oh.us/>

his openly carried firearm. At the time the incident took place, Englewood had a municipal ordinance that prohibited firearms in its parks. Mr. Maynard had a concealed carry permit, however, and in light of this Court's decision in the *Clyde* case, Mr. Maynard was allowed by the Englewood police officers to cover his weapon and continue to carry it at the park.

Shortly after the incident at the Englewood Arts Festival, Mr. Maynard attended an Englewood City Council meeting and demanded that the city amend its ordinance to remove the prohibition against firearms in light of the General Assembly's enactment of R.C. 9.68, which seeks to prohibit all forms of municipal firearm regulations and is the subject of this appeal. Englewood subsequently amended its ordinance to remove the prohibition against firearms in city parks as demanded by Mr. Maynard. Notwithstanding this fact, Mr. Maynard filed suit against Englewood approximately five months after Englewood amended its ordinance claiming a violation of R.C. 9.68 and his rights under the United States and Ohio Constitutions. Englewood City Council amended the city's ordinance hoping to avoid litigation and the threat of an award of attorneys' fees under R.C. 9.68, but regrettably its actions did not forestall the lawsuit.

In its defense of the civil suit filed by Mr. Maynard in the Montgomery County Common Pleas Court, Englewood (like Cleveland herein) challenges the constitutionality of R.C. 9.68 based primarily on the fact it is not a general law. Although the State of Ohio has claimed in its Merit Brief that R.C. 9.68 is part of a "statewide, comprehensive legislative scheme regulating firearms," Englewood does not agree and believes its experience with Mr. Maynard proves this point. This is because nowhere in the "statewide, comprehensive legislative scheme" identified by the State of Ohio are the legal parameters of an Ohio citizen's right to openly carry a firearm in a public park directly, or even indirectly, addressed. As a result of R.C. 9.68, Ohio citizens

and home rule municipalities are left to sift through numerous but not cohesively or collectively organized state and federal laws to ascertain the “Who, What, When, Where, and How?” of firearm regulations, and then apply the result of their individual investigations to the particular facts of a case. As to firearm open carry rights, Englewood has found a dearth of Ohio and/or federal laws on the subject. And none of the statutory provisions identified in the State of Ohio’s Merit Brief directly address the open carry issue either. And while R.C. 9.68 admittedly states that only state or federal laws are permitted to regulate the open carrying of firearms in Ohio, Englewood was not able to find any state or federal laws that actually do.

As acknowledged by the State of Ohio in its Merit Brief, “[t]o be sure, gun regulation is a contentious topic in this State and in this country.”<sup>14</sup> Englewood agrees. It’s experience with Mr. Maynard is a case-in-point. In light of this fact, Englewood respectfully submits that the General Assembly must actually provide a cohesive, statewide, comprehensive legislative scheme addressing all aspects of firearms regulation, and not just comprehensive legislation addressing concealed carry rights, if it intends to successfully pre-empt Ohio home rule municipalities from supplying the deficiencies. It is not enough for the General Assembly to essentially say in R.C. 9.68 that “if you can’t find a prohibition anywhere in Ohio or federal law (but we are not going to tell you exactly where to look), then a citizen may carry his/her firearm wherever he/she wants.” This is not the constitutional promise set forth in § 4, Article I of the Ohio Constitution, which only guarantees that Ohio citizens may bear arms “for their defense and security.” Only a true general law can legitimately trump an Ohio home rule municipal corporation’s rights under § 3, Article XVIII of the Ohio Constitution. And R.C. 9.68 simply is not such a general law.

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<sup>14</sup> Merit Brief, p. 3.

### **STATEMENT OF THE CASE**

Englewood agrees with the Statement of the Case provided by the State of Ohio in its Merit Brief.

### **STATEMENT OF THE FACTS**

Englewood essentially agrees with the Statement of the Facts set forth by the State of Ohio in its Merit Brief, but not the characterizations or adjectives used by the State of Ohio to describe those facts. Specifically, while Englewood agrees the Ohio General Assembly has promulgated various laws regarding firearms in R.C. 9.68, R.C. 1547.69, R.C. 1541.19, and in quite a few provisions in Title XXIX Crimes-Procedure, and also has incorporated by reference federal firearms laws, Englewood does not agree with the State of Ohio's characterization of these laws as a "litany of laws," a "comprehensive list," or even that they are "broad in scope." Additionally, while Englewood agrees with the State of Ohio that the General Assembly declared it "need[ed] to provide uniform laws throughout the state" when it enacted R.C. 9.68, it does not agree with the State of Ohio's characterization that R.C. 9.68 has satisfied that appropriate goal.

By the State of Ohio's own indirect admission by virtue of the alleged "litany" of firearms regulations set forth in different chapters and sections of the Ohio Revised Code, there is no single chapter of the Ohio Revised Code to which an Ohio municipality, such as Englewood, may refer in an attempt to balance a citizen's undeniable right to carry a firearm for his/her defense and security under § 4, Article I of the Ohio Constitution, with the inherent limitations of that right recognized by this Court. *Klein v. Leis*, supra, 99 Ohio St. 3d at 539, 795 N.E.2d at 637. The concern over a "patchwork of local firearm ordinances" expressed by Senator Jim Jordan that R.C. 9.68 was intended to address was inadvertently replaced by a

patchwork of state and federal legislation that does not provide sufficient guidance on a variety of issues, including but not limited to an Ohio citizen's open carrying rights now being faced by Englewood.

The only instance Englewood could find where an Ohio citizen's right to openly carry a firearm is directly addressed is in R.C. 9.68(C), which attempts to define the language set forth in R.C. 9.68(A), and states in pertinent part: "[a]s used in this Section...the possession, transporting, or carrying of firearms, their components, or their ammunition include, but are not limited to, the possession, transporting, or carrying, openly or concealed on a person's person or concealed ready at hand, of firearms, their components, or their ammunition."<sup>15</sup> Thus, the only statutory provision addressing "open carry" rights, which is the issue relevant to Englewood, can be found in a definitional section in R.C. 9.68. However, this Court has recognized that a statutory definition cannot constitute a general law for purposes of home rule analysis. *City of Cincinnati v. Baskin*, 112 Ohio St. 3d 279, 281, 2006-Ohio-6422, 859 N.E.2d 514, 517, ("they have embroiled themselves in a pointless theoretical debate as to whether a statutory definition constitutes a general law for purposes of home rule analysis").

Nor does Sub. H.B. No. 347, the bill within which the General Assembly passed R.C. 9.68, provide any guidance on the open carry rights of Ohio citizens. Sub. H.B. No. 347 simply amended 22 already existing concealed carry and concurrent penalty provisions and enacted R.C. 9.68. And nowhere does the State of Ohio in its Merit Brief attempt to argue that Sub. H.B. No. 347 should be used by this Court to conclude that R.C. 9.68 is "part of [a] comprehensive statewide legislative regulation that relates to" firearm possession. *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776.

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<sup>15</sup> Emphasis added.



Thus, Englewood agrees with the State of Ohio's statement that there are twenty-odd Ohio statutes enacted in various chapters of the Ohio Revised Code, and several provisions in the United States Code, that refer to firearms. Englewood also agrees the General Assembly passed R.C. 9.68 in an attempt to forestall piecemeal municipal legislation of firearms. Englewood simply does not agree that the General Assembly succeeded in that worthy goal when it enacted R.C. 9.68.

### **ARGUMENT**

Pursuant to Section 3 of the Home Rule Amendment, Article XVIII of the Ohio Constitution, a state statute will take precedence over a local ordinance only if "(1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law." *Canton v. State*, supra, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963. As previously acknowledged above and by the State of Ohio, to qualify as a general law, "a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." *Id.* at syllabus. The Court of Appeals concluded R.C. 9.68 does not satisfy either the first or third prongs of the *Canton* test, and the State of Ohio is mistaken when it attempts to persuade this Court otherwise.

A. **Answer to Appellant State of Ohio's Proposition of Law No. I:**

*R.C. 9.68 is not part of a comprehensive, statewide legislative scheme that regulates firearms and, therefore, is not a general law and an attempted violation of Cleveland's home rule authority.*

As acknowledged by the State of Ohio, the primary dispute between Cleveland and the State pertains to the application of the *Canton* test, and specifically the first and third prongs of that test. Englewood is not arguing that R.C. 9.68 violates either the second or fourth prongs of the *Canton* test and those prongs will not be addressed herein.

(1) **R.C. 9.68 is not part of a comprehensive, statewide legislative regulation.**

Under *Canton's* first prong, the challenged statute, R.C. 9.68, must be “part of [a] comprehensive statewide legislative regulation that relates to” firearm possession.<sup>16</sup> *AFSA*, supra, 2006-Ohio-6043 at ¶ 33. According to the State of Ohio, this Court has used “two markers to evaluate this prong.”<sup>17</sup> The first “marker” is whether the General Assembly “express[ed] its intent for statewide comprehensive...laws” on the subject.<sup>18</sup> *Clyde*, 2008-Ohio-4605 at ¶ 41. Second, the Court examines whether a “comprehensive statewide legislation regulation” in fact exists.<sup>19</sup> *AFSA*, 2006-Ohio-6043 at ¶ 33.

As a preliminary matter, Englewood agrees with the State of Ohio that R.C. 9.68 probably satisfies the first “marker” as described above, as the General Assembly states therein that it intends to “...provide uniform laws throughout the state regulating the ownership, possession, purchase, or other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition.” R.C. 9.68(A). Although intent to pass

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<sup>16</sup> Merit Brief, p. 10.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

“uniform laws” is not exactly synonymous with intent to establish “statewide comprehensive laws,” Englewood agrees that the essential meaning of the first marker has been satisfied in R.C. 9.68(A).

Englewood does not, however, agree with the State of Ohio’s argument that “comprehensive statewide legislative regulation” in fact exists. *AFSA*, 2006-Ohio-6043 at ¶ 33. As previously discussed, the State of Ohio has argued that R.C. 9.68 is simply “one component of a comprehensive regime that touches every facet of gun ownership and possession in Ohio.”<sup>20</sup> The problem with this argument, however, is that the State of Ohio then attempts to prove its point by pointing to a smattering of firearms statutes located in various chapters of the Ohio Revised Code and/or federal statutes, which are not even directly related to each other, let alone constitute “a comprehensive regime.” Nor do these statutes begin to touch “every facet of gun ownership and possession in Ohio.” At the very least from Englewood’s perspective, none of these statutes appear to directly address the open carry rights of citizens in Ohio at all.

Furthermore, the State of Ohio’s argument that a “statewide, comprehensive legislative scheme” can be pooled together from various, separate chapters and sections of Ohio and federal statutes does not comport with this Court’s past interpretation of this component of the *Canton* test. When examining what constitutes a “comprehensive legislative scheme,” this Court has found such a scheme to exist when the regulations are either passed as part of the same legislative act, or as part of the same chapter of the Ohio Revised Code.

For example, in *Marketing Research Services, Inc. v. Public Utilities Commission of Ohio* (1987), 34 Ohio St. 3d 52, 54, 517 N.E.2d 540, 542, this Court found that the Federal Communications Act of 1934 constituted “a comprehensive legislative scheme regulating

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Merit Brief, p. 11.

common carriers involved in interstate telecommunications.” Similarly, in *AFSA v. Cleveland*, supra, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776, this Court concluded R.C. 1.63 was part of a “comprehensive legislative scheme” by examining the totality of the provisions set forth in Sub. H.B. 386, by which R.C. 1.63 was enacted. Again, in *Ohio Association of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d 242, 245, 1992-Ohio-65, 602 N.E.2d 1147, 1150, this Court concluded R.C. 4749.09 was part of a comprehensive statutory scheme by examining it in the context of the other provisions set forth in R.C. Chapter 4749 in its entirety. Finally, in *Clermont Environmental Reclamation Co. v. Wiederhold* (1982), 2 Ohio St. 3d 44, 442 N.E.2d 2278, this Court concluded R.C. 3734.05(D)(3) was a “general law” by examining it in the context of the other provisions of the same chapter, i.e. R.C. Chapter 3734, which similarly deal with the state’s control and disposal of hazardous waste.

The foregoing decisions rendered by this Court demonstrate that the State of Ohio’s attempt to create a “statewide, comprehensive legislative scheme regulating firearms” essentially from any and all Ohio and federal statutes that mention the word firearm, even if they are not set forth in the same chapter or enabling legislation, has no precedent. As a practical matter, it seems obvious to Englewood that a “statewide, comprehensive legislative scheme” regarding firearms connotes a body of law to which any Ohio citizen or municipal corporation could refer in order to ascertain their rights and responsibilities in this important and often controversial area of the law. It is not enough for the General Assembly to declare that firearms are only to be regulated by state or federal law: the General Assembly must also provide those laws in a comprehensive, cohesive legislative scheme. And if the General Assembly fails to do so, then municipal corporations must and do have the home rule authority under the Ohio Constitution to provide the missing legislation.

- (2) **R.C. 9.68 does not set forth police, sanitary, or similar regulations, and only attempts to limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations.**

The third prong of the *Canton* test is that in order to be a general law, a statute must “set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations.” *Canton v. State*, supra, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963. The Court of Appeals concluded R.C. 9.68 does not satisfy the third prong of the *Canton* test because it does not establish any police regulations, but instead limits the legislative power of municipal corporations to do so. Furthermore, since there is no “comprehensive, statewide legislative scheme” as required to satisfy the first prong of the *Canton* test, the lack of police regulations in R.C. 9.68 is fatal any finding of a general law.

Englewood submits that the Court of Appeals was correct when it concluded R.C. 9.68 does not satisfy the third prong of the *Canton* test. Unlike the concealed carry laws codified in R.C. 2923.126, which were at issue in *Clyde*, R.C. 9.68 sets forth absolutely no police, sanitary, or similar regulations with regard to firearms in Ohio. For example, as explained previously, unlike the carrying of concealed firearms, extensive research of Ohio law has not revealed any statutes enacted by the General Assembly that set forth specific regulations regarding the open carrying of firearms.

There is, in fact, a void in state legislation regarding the regulation of open carry of firearms in Ohio. Rather than provide necessary and appropriate legislative guidance as to the open carrying of firearms, R.C. 9.68(A) states that municipalities cannot provide it. Even worse, R.C. 9.68(B) threatens Ohio municipalities with mandatory payments of attorney’s fees in the

event they try to fill the void. Put simply, R.C. § 9.68 does nothing more than try to limit an Ohio municipal corporation's legislative ability to establish reasonable police regulations regarding the open carrying of firearms; it provides no substantive, needed guidance in that controversial area whatsoever.

As recognized by the Court of Appeals, Justice O'Connor in her concurring opinion in *Cincinnati v. Baskin*, 112 Ohio St. 3d 279, 2006-Ohio-6422, 859 N.E.2d 514, observed the lack of comprehensive Ohio legislation governing firearms. Specifically, Justice O'Connor stated therein as follows:

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

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

Id.

Although Justice O'Connor wrote the above opinion immediately before R.C. 9.68 was effective, neither R.C. 9.68 nor Sub. H.B. 347 added any substantive firearm guidance to remediate the noted deficiencies. Again, all R.C. 9.68 does is establish that state and federal laws shall be the sole governing regulations over firearms in Ohio. And all Sub. H.B. 347 did was to enact R.C. 9.68 and amend already existing firearms provisions. Thus, neither R.C. 9.68 nor Sub. H.B. 347 did anything to fill in the gaps existing in Ohio legislation regarding firearms recognized by Justice O'Connor.

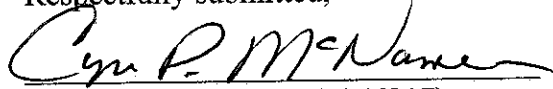
If the General Assembly decides in the future to establish comprehensive, police regulations governing all aspects of firearms, then such legislation will likely be a general law. Until that time, however, the General Assembly cannot forestall an Ohio municipal corporation from exercising its constitutional home rule rights to provide the missing and needed guidance.

### **CONCLUSION**

R. C. 9.68 is not a general law. First, R.C. 9.68 is not part of a comprehensive legislative scheme. Second, it does not establish police regulations regarding firearms, but simply states municipal corporations cannot establish them. Although the General Assembly hoped R.C. 9.68 would eliminate piecemeal regulation of firearms in Ohio, the actual effect has been and will continue to be piecemeal litigation unless and until the General Assembly actually establishes general laws providing the necessary statutory guidance.

The Ohio Constitution unquestionably affords Ohio citizens the right to bear arms for their defense and security. By its very terms, however, the right to bear arms is not absolute and must be for a citizen's "defense and security." Ohio municipal corporations and citizens alike must have a body of law definitively establishing the rights and responsibilities vis-à-vis firearms. Comprehensive legislation must be enacted by the General Assembly covering these essential rights and responsibilities if, in fact, the General Assembly intends to effectively forestall a municipal corporation's constitutional home rule rights to supply the omissions. It is not enough for the General Assembly to simply say municipal corporations may not do so. Consequently, the judgment of the Eighth District Court of Appeals should be affirmed.

Respectfully submitted,



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It is hereby certified that a copy of the foregoing has been served via ordinary U.S. mail, postage prepaid, this 1<sup>st</sup> day of July, 2010, upon the following:

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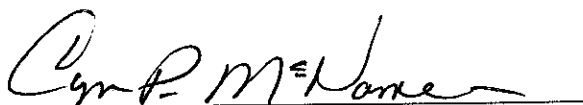
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