IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
Plaintiff-Appellant,	:	
	:	Case No. 2024-1050
v.	:	
ELIJAH STRIBLIN,	:	
Defendant-Appellee.	:	
	:	

BRIEF OF *AMICUS CURIAE* CITIES OF CINCINNATI, OHIO AND COLUMBUS, OHIO IN SUPPORT OF PLAINTIFF-APPELLANT

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INTEREST OF *AMICUS CURIAE*

Amicus curiae are municipal corporations empowered by the Ohio Constitution to "exercise all powers of local self-government." Article XVIII, Section 3, Ohio Constitution. They share a strong interest in maintaining the prohibition on the possession of firearms in premises for which a D permit has been issued under Chapter 4303 of the Revised Code.

Amici's police officers respond to bars and restaurants, where the presence of a gun can transform a disagreement into a fatality. The safety of the *Amici*'s residents and law enforcement officers would be jeopardized if R.C. 2923.121 were to be struck down.

STATEMENT OF THE CASE AND THE FACTS

Section 2923.121 of the Ohio Revised Code prohibits the possession of firearms "in any room in which any person is consuming beer or intoxicating liquor in a premises for which a D permit has been issued under Chapter 4303. of the Revised Code or in an open air arena for which a permit of that nature has been issued." R.C. 2923.121(A).

This case is a criminal appeal of Defendant-Appellee's April 7, 2023 conviction under R.C. 2923.121 for possessing a firearm in a premises for which a D permit has been issued. Defendant-Appellee's conviction was reversed on June 4, 2024.

Because possession of a firearm in liquor establishments is not protected by the Second Amendment, *Amici* urge this Court to reverse the decision of the Fifth District Court of Appeals. This position is supported by a centuries-long history of laws prohibiting the possession of firearms in bars. This longstanding tradition of regulation shows that laws prohibiting the possession of firearms in bars and restaurants is beyond the scope of firearm rights.

ARGUMENT

Second Amendment rights are "not unlimited." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). To determine whether a modern firearm regulation is constitutional, courts must assess whether the regulation is "consistent with the Second Amendment's text and historical understanding." *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1, 6 (2022). This approach allows for "modern regulations that were unimaginable at the founding." *Id.* at 28. "When confronting such present-day firearm regulations, this historical inquiry that courts must conduct will often involve reasoning by analogy—a commonplace task for any lawyer or judge." *Id.* To determine whether a historical regulation is a proper analogue for a distinctly modern firearm regulation, the question is whether the two regulations are "relevantly similar." *Id.* (quoting Cass Sunstein, *On Analogical Reasoning*, 106 Harv. L. Rev. 741, 773 (1993)).

To sustain a regulation, the government must only "identify a well-established and representative historical *analogue*, not a historical *twin*." *Id.* at 30 (emphases in original). "So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster." *Id.* at 30.

R.C. 2923.121 has many historical analogues, and it is therefore constitutional. *See Antonyuk v. James*, 2024 U.S. App. LEXIS 26958, at *181 (2d Cir. 2024) (upholding New York prohibition on firearm possession at liquor establishments because they are "typically crowded milieus and are frequented by intoxicated individuals who cannot necessarily be trusted with firearms and who may also, due to their intoxication, be unable to defend themselves effectively").

A. The history of laws regulating the mix of firearms and alcohol dates to the founding.

There is a widely recognized "dangerous connection between guns and alcohol." *See* Mark Anthony Frassetto, *The Historical Regulation of Intoxicated Firearms Possession and Carry*, 108

Marq. L. Rev. 101, 103 (forthcoming 2024) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4742106). "The idea that the government may protect its citizens from the dangers of drunks wielding firearms is backed up by history and tradition." *State v. Weber*, 163 Ohio St.3d 125, 155 (2020) (DeWine, J., concurring in judgment only). When a statute restricts an individual's right to use a weapon in a reckless manner, "colonial-era . . . restrictions on uses of weapons that posed a present danger to others" are "particularly relevant." *Id.* at 153 (DeWine, J., concurring in judgment only); *see also Chiafalo v. Washington*, 591 U.S. 578, 593 (2020) ("As James Madison wrote, 'a regular course of practice' can 'liquidate & settle the meaning of' disputed or indeterminate 'terms & phrases.'"). There is a "consistent and representative tradition of regulating access to firearms by people with impaired self-control or judgment, specifically those who are intoxicated." *Antonyuk v. James*, 2024 U.S. App. LEXIS 26958, at *178–79 (2d Cir. 2024).

One such restriction was enacted in Virginia, which by the mid-1600s had passed a law fining those who "shoot any guns at drinking." Act of March 10, 1655, 1655 Va. Laws 401. Virginia's law is "compelling evidence that in the founding era, the Second Amendment would have been understood to allow disarming someone who posed a present danger to others," and that "plainly" includes intoxicated individuals. *Weber*, 163 Ohio St.3d at 154 (DeWine, J., concurring in judgment only). In 1785, New York prohibited the firing of guns "on the eve of the last day of December, and the first and second days of January" because "great dangers have arisen, and mischief been done." An Act to Prevent the Firing of Guns and other Fire Arms within this State on Certain Days Therein Mentioned, 1784–85 N.Y. Laws 152.

Restrictions on the uniquely dangerous combination of alcohol and firearms increased in the nineteenth and early twentieth centuries. An 1868 Kansas law banned anyone "under the

influence of intoxicating drink" from "carrying on his person a pistol, bowie-knife, dirk or other deadly weapon." 1868 Kan. Sess. Laws 66. Oklahoma and Texas followed by prohibiting the carrying of dangerous weapons "into any ball room, or to any social party . . . or to any place where intoxicating liquors are sold." 1890 Okla. Stat. 495; *An Act Regulating the Right to Keep and Bear Arms, reprinted in* George W. Paschal, A Digest of the Laws of Texas: Containing the Laws in Force, and the Repealed Laws on Which Rights Rest from 1754 to 1875, at 1322 (5th ed. 1873). Georgia passed a law in 1870 prohibiting deadly weapons at any "public gathering." *See* Acts and Resolutions of the General Assembly of the State of Georgia, at 421 (1870).

The Supreme Court of Missouri even upheld that state's prohibition on firearm possession by intoxicated persons, holding that the law was in "perfect harmony with the constitution" given "the mischief to be apprehended from an intoxicated person going abroad with fire-arms." *State v. Shelby*, 2 S.W. 468, 469 (1886). The Supreme Court of Tennessee likewise recognized that firearm rights are "limited by the duties and proprieties of social life." *Andrews v. State*, 50 Tenn. 165, 181 (1871).

B. The "sensitive places" doctrine permits governments to regulate firearm possession at certain specific locations, including bars and restaurants where alcohol is sold.

Apart from states' tradition of regulating the combination of firearms and drinking, the United States Supreme Court has also shown deference to "longstanding prohibitions" on firearm possession "in sensitive places." *Heller*, 554 U.S. at 626. When the historical record fails to reveal "disputes regarding the lawfulness" of weapon prohibitions in certain locations, it is "settled that these locations were 'sensitive places' where arms carrying could be prohibited consistent with the Second Amendment." *Bruen*, 597 U.S. at 30.

One scholar has noted that, in the nineteenth century, "state and local governments maintained the authority to prohibit the carrying of dangerous weapons" in "bars, clubs, social

venues, or anywhere in which alcohol or psychoactive or mood altering drugs were purchased or consumed." Patrick J. Charles, The Fugazi Second Amendment, 71 Clev. St. L. Rev. 623, 713. Indeed, the City of Cincinnati used its authority under the "sensitive places" doctrine to ban firearms from its parks. *See* Annual Report of the Board of Park Trustees for the Year Ending December 31, 1891, at 27 (1892).

New York has also outlawed the possession of firearms in "any establishment holding an active license for on-premise consumption . . . where alcohol is consumed." N.Y. Penal L. § 265.01e(2)(o). Recently, the U.S. Court of Appeals for the Second Circuit sustained New York's regulation, holding that "regulating firearms based on liquor-serving places rather than intoxication is consistent with the national tradition." *Antonyuk*, 2024 U.S. App. LEXIS at *183–84. The Second Circuit therefore vacated a district court's preliminary injunction enjoining enforcement of the statute. *See id*.

CONCLUSION

For the foregoing reasons, *Amici* file this brief in support of Plaintiff-Appellant and urge this Court to reverse the judgment of the court of appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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