

IN THE SUPREME COURT OF OHIO

City of Toledo,	)	On Appeal from the
	)	Lucas County Court
Plaintiff-Appellee	)	of Appeals, Sixth
	)	Appellate District
vs.	)	
	)	Court of Appeals
Bruce Beatty,	)	Case No. L-05-1319
	)	
Defendant-Appellant	)	

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**MOTION FOR RECONSIDERATION**

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Now comes Bruce Beatty, Defendant-Appellant, and moves this Court for reconsideration of its decision as announced on January 24, 2007 refusing to grant jurisdiction. In light of its recent decision in *Am. Fin. Serv. Ass'n v. Cleveland* (2006), 112 Ohio St.3d 170, this Court is urged to reconsider its decision and accept the above captioned case for appeal.

Respectfully submitted,

Daniel T. Ellis, Counsel of Record



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### **GROUND FOR RECONSIDERATION**

In affirming the decision of the court below, the Sixth District Court of Appeals found that R.C. 2923.126(A) did not have a uniform application; therefore, it was not a general law. *Toledo v. Beatty*, 6th Dist. No. L-05-1319, 2006-Ohio-4638. The court completely disregarded Appellant's argument that the state law concerning handguns preempted municipal laws concerning handguns, stating that it was a "clear violation of the home-rule amendment for the General Assembly to attempt to limit and preempt all authority of a municipality regarding the regulation of concealed handguns within its jurisdiction." In coming to this conclusion, the court relied on its previous decision in *Am. Fin. Serv. Ass'n v. Toledo* (2005), 161 Ohio App.3d 477. However, *American Financial* has since been

overruled by this Court, rendering the appellate court's reliance on the decision misplaced and its final decision on the issue of whether R.C. 2923.126(A) is a general law incorrect.

In doing its general law analysis, this Court held that the statute in question uniformly applied to all parts of the state because it subjected every entity making loans in Ohio to the same obligations. *Am. Fin. Serv. Ass'n v. Cleveland* (2006), 112 Ohio St.3d 170. On the other hand, city regulations that subject citizens to different standards actually prevent uniformity. *Id.* at 176. Likewise, R.C. 2923.126(A) subjects every citizen of Ohio licensed to carry a concealed firearm to the same obligations. Specifically, R.C. 2923.126(B) sets forth an exhaustive list of where a person may not carry a concealed firearm. This list does not include municipal parks. Yet, Toledo's Rule 18 prohibits a person from carrying a concealed firearm in a city park. Using the same analysis this Court did in *American Financial*, it is clear that R.C. 2923.126(A) applies uniformly throughout the state, and that it is actually Toledo's Rule 18 that prevents uniformity in the concealed carry laws in Ohio.

Further, this Court concluded that any local ordinance that sought to prohibit conduct that a state statute authorized was in direct conflict with the statute and was unconstitutional. *Id.* at 179. Moreover, a city ordinance that imposes stricter standards than a state statute is in conflict with the statute and will not be upheld. *Id.* R.C. 2923.126(A) authorizes a properly licensed person to "carry a concealed weapon *anywhere* in this state," subject to R.C. 2923.126(B) or (C). (Emphasis added). As there is no mention of a prohibition on concealed firearms in municipal parks, R.C. 2923.126(A) authorizes a properly licensed person to carry a concealed firearms in municipal parks in Ohio. Therefore, Toledo's Rule 18 impermissibly imposes a stricter standard than R.C. 2923.126(A) by prohibiting the carrying of a concealed weapon in a city park.

## CONCLUSION

For the foregoing reasons, it is respectfully urged that the motion for reconsideration be granted and that this Court grant jurisdiction.

Respectfully submitted,

Daniel T. Ellis, Counsel of Record



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Daniel T. Ellis (0038555)

COUNSEL FOR APPELLANT  
BRUCE BEATTY

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Motion For Reconsideration* has been served by ordinary U.S. Mail upon Michael Neidzielski, Assistant Prosecutor, City of Toledo, Prosecutor's Office, 555 North Erie Street, Toledo, Ohio 43624 and John T. Madigan, Esq., City of Toledo Law Department, One Government Center, Suite 2250, Toledo, Ohio 43624 this 5<sup>th</sup> February, 2007.



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