

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Plaintiff Ohioans for Concealed Carry, Inc. ("Plaintiffs") sued the City of Clyde on August 12, 2004, challenging City of Clyde Ordinance #2004-41. After seeking a ninety day extension to answer, Defendant City of Clyde ("City of Clyde") filed an answer and counterclaim for declaratory judgment, challenging Section 9 of House Bill 12 ("H.B. 12") as unconstitutional under Article XVIII, Section 3 of the Ohio Constitution ("Home Rule Amendment"). Specifically, they allege that H.B. 12 "purports to prohibit municipalities from enacting restrictions on the places where to [sic] person possessing a valid license to carry a concealed handgun may carry a handgun concealed." Counterclaim, ¶24. The Attorney General denies that H.B. 12 is unconstitutional, and moves to intervene to defend the state law.

II. LAW AND ARGUMENT

Civ. R. 24(A) states that upon timely application,¹ anyone shall be permitted to intervene in an action: (1) when a state statute confers an unconditional right to intervene; or (2) when the person seeking to intervene claims an interest relating to the action and is so situated that the disposition of the action may impair that person's ability to protect that interest, unless existing parties adequately represent the applicant's interest. Both elements are satisfied here.

First, R.C. §2721.12 grants the Attorney General a right to be heard in this case. That section provides that in a declaratory judgment action, if any statute or ordinance is alleged to be unconstitutional, the "attorney general . . . shall be heard." The Ohio Supreme Court has held that the "very apparent intent" of R.C. §2721.12 is to ensure that the Attorney General is informed of attacks on the constitutionality of the laws of this state. *Ohioans For Fair*

¹ This motion to intervene is timely because the Defendants filed their counterclaim seeking a declaratory judgment on November 19, 2004.

Representation v. Taft (1993), 67 Ohio St.3d 180, 184. The Court noted that the statute's objective was satisfied in that case because the Attorney General intervened early after service of the lawsuit. *Id*

Second, even without this unconditional right to intervene, the Attorney General has an interest in the outcome of this action and is so situated that the Court's disposition of the constitutional questions will impair his ability to protect that interest. The Ohio Attorney General is the chief law officer for the state and all its departments, including the Ohio General Assembly. R.C. §109.02.

Clearly, the people of Ohio, through their representatives in the Ohio General Assembly, passed H.B. 12, which is being challenged by the City of Clyde. The people deserve to have their elected chief law officer defend their laws. Moreover, the Ohio General Assembly, an institution of the state, is so situated that the disposition of this matter may impede its ability to protect its legislative interest and prerogative unless the Attorney General intervenes. Thus, the Ohio Attorney General is a person with an interest in the proceedings and is so situated that the disposition of the action will impede his ability to protect that interest unless he intervenes.

Further, it is clear that the important interests and defenses of the Plaintiff are different than those of the State of Ohio, the Ohio General Assembly, and the Attorney General. As the attached "Notice of Defenses" sets forth, the Attorney General will defend the constitutionality of H.B. 12. Clearly, only the Ohio Attorney General is in the position to comprehensively defend the statutory challenge by the City of Clyde.

The burden of showing that a claimed intervenor's interests may not be adequately represented is minimal. *State ex rel. Superamerica Group v. Licking Cty. Bd. of Elections* (1997), 80 Ohio St.3d 182; *State ex rel. Smith v. Frost* (1995), 74 Ohio St.3d 107, 108; *Dept. of*

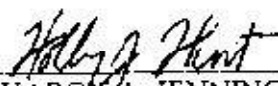
Adm. Serv., Office of Collective Bargaining v. State Emp. Relations Bd. (1990), 54 Ohio St.3d 48, 51. As such, and as provided in R.C. §2721.12, the Ohio Attorney General has a responsibility to defend the laws of the state from a constitutional challenge. In this case, he can only fulfill that responsibility if permitted to intervene.

III. CONCLUSION

For these reasons, the Attorney General asks the Court to grant his motion to intervene in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Motion to Intervene by Ohio Attorney General Jim Petro* has been served via ordinary mail, postage prepaid, this 2nd day of December, 2004, upon the following:

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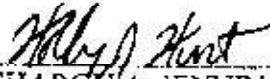
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Notice of Defenses of Ohio Attorney General Jim Petro*
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