

Ohioans for Concealed Carry, Inc., et al. : **In the Sandusky County**
: **Common Pleas Court**
Plaintiffs :
: **Case No. 04-CV769**
vs. :
: **Judge: Harry A. Sargent**
City of Clyde, Ohio, et al. :
:
Defendants. :

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Now come Plaintiffs, by and through undersigned counsel, pursuant to Ohio Civil Rule 56, and request they be granted summary judgment on their complaint for Declaratory Judgment and Injunctive Relief. A memorandum in support follows.

Daniel T. Ellis 0038555
Fuller & Henry Ltd
One Seagate, Suite 1700
P.O. Box 2088
Toledo, Ohio 43603-2088
Phone: (419) 247-2544
Fax: (419) 247-2665
DTE@FullerHenry.com

Attorneys for Plaintiffs

L. Kenneth Hanson, III 0064978
Firestone & Brehm, Ltd
15 W. Winter Street
Delaware, Ohio 43015
740.363.1213
740.369.0875 (fax)
khanson@fbylaw.com

Attorneys for Plaintiffs

MEMORANDUM IN SUPPORT

Factual History

On January 7th, 2004, the 125th General Assembly passed Amended Substitute House Bill Number 12. (“HB12”) The Bill was signed into law the next day by Governor Taft, and became effective on April 8, 2004. HB12 was the first law in Ohio’s history to allow for a Concealed Handgun License (“CHL”), and, with regard to handguns, completely replaced the prior system of affirmative defenses. HB12 consists of eleven total sections, with the codifications occurring within the first three sections. The remaining 8 sections contain expressions of legislative intent, effective dates and a severability provision. The effect of HB 12 is to implement a comprehensive, statewide licensing system for the carrying of concealed handguns.

On May 18, 2004, the City of Clyde, Ohio passed Ordinance No. 2004-41, which appears to be in direct response to HB12. Said ordinance provides, in pertinent part, that no one may carry a deadly weapon within the confines of any City park “irrespective of whether such person has been issued a” CHL. It is undisputed that the City of Clyde is a Charter Government.

On July 7, 2004, after several other attempts at communications, undersigned counsel sent a letter to each Defendant except the Sandusky County Sheriff, via Federal Express, setting forth the applicable law, and demanding that the Ordinance be rescinded. No response was received to said letter, nor the follow-up phone calls, voice mails or emails. On July 30, 2004, a public records request was sent to the City, requesting copies of Ordinance No. 2004-41,

together with any legislation amending or repealing said ordinance. The response was received on August 3, 2004, indicating that Ordinance No. 2004-41 had not been amended or repealed.

Procedural History

Plaintiffs filed their verified suit for Declaratory Judgment and Injunctive Relief on August 12, 2004, together with a request for an Ex Parte and Temporary Restraining Order. This Court granted the motion for the Ex Parte Order that same day, and with the consent of counsel for Defendants, ruled that said Order would be extended beyond the 14 day period provided for in Civil Rule 65(A).

On November 16, 2004, after several extensions, Defendants filed their Answer and Counterclaim for Declaratory Judgment. On December 2, 2004, Attorney General Jim Petro filed a Motion to Intervene in response thereto. This Court granted said motion on February 3, 2005.

All pre-trial proceedings occurred with the consent and cooperation of the parties. In lieu of Discovery, the parties have filed herein a set of stipulations establishing the relevant facts not already established by the various pleadings. This matter is scheduled to be submitted to the Court upon the briefs of the parties, pursuant to scheduling Order.

Applicable Law

Ohio Civil Rule 56(C) provides that a party may move for summary judgment, and said motion shall be granted “forthwith if the pleadings, depositions, answer to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”

The standard, in considering a motion for summary judgment, as set forth in Civil Rule 56(C), is “A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.”

R.C. § 2721.01 et seq. provides generally for Declaratory Judgments. Specifically, R.C. § 2721.03 provides that “Any person...whose rights, status or other legal relations are affected by...statute...municipal ordinance...may have determined any question of construction or validity arising under such...statute, rule, ordinance...and obtain a declaration of rights, status, or other legal relations thereunder.” R.C. § 2721.01 defines a person as “...any person,

partnership, joint-stock company, unincorporated association, society, municipal corporation, or other corporation.”

With regard to Declaratory Judgment actions, the general existence of a criminal statute is sufficient to establish that there is a matter in controversy between the parties. “Where a municipal ordinance imposing criminal penalties upon a contemplated act will be enforced against a person if he proceeds with that act, such person has standing to test the validity, construction and application of such ordinance by an action for declaratory judgment, and it is unnecessary to demonstrate the existence of an actual controversy for such a person to incur a violation of the ordinance.” Peltz v. City of South Euclid (1967), 11 Ohio St.2d 128, Syllabus 1. “Any person whose rights, status or other legal relations are affected by a law may have determined any question of construction or validity arising under such law, where actual or threatened prosecution under such law creates a justiciable controversy. Courts of record may declare rights, status and other legal relations, and the declaration may be either affirmative or negative in form and effect.” Pack v. City of Cleveland (1982), 1 Ohio St.3d 129, Syllabus 1.

O Const. XVIII § 3 provides that a municipality may adopt local police regulations “as are not in conflict with the general laws.” A conflicts of law analysis begins with an examination of whether the municipal ordinance is an exercise of inherent local self-government power, or an exercise of a local police power. “A state statute takes precedence over a local ordinance when (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 (2002), 95 Ohio St.3d 149, 151. Each of these three elements has developed into a subset of law.

First, in determining whether an ordinance conflicts with a statute, the basic test is whether one law prohibits what the other law allows. “There can be no conflict unless one authority grants a permit or license to do an act which is forbidden or prohibited by the other.” Village of Struthers v. Sokol (1923), 108 Ohio St. 263, 268. The Supreme Court used a similar analysis over half a century later in revisiting this test. “Specifically, does Ordinance No. 12-1984 allow anything that R.C. Chapter 3734 prohibits, or conversely, does Ordinance No. 12-1984 prohibit anything permitted by R.C. Chapter 3734?” Fondessy Enterprises, Inc. v. City of Oregon (1986), 23 Ohio St.3d 213, 217.

Second, in determining whether an ordinance is the exercise of a power of local self-government or the exercise of a police power, a long string of Supreme Court decisions has already established that the regulation of firearms is an exercise of police power. See Mosher v. City of Dayton (1976), 48 Ohio St.2d 243; City of University Heights v. O’Leary (1981), 68 Ohio St.2d 130; Klein v. Leis (2003), 99 Ohio St.3d 537; Arnold v. Cleveland (1993), 67 Ohio St.3d 35; State v. Nieto (1920) 101 Ohio St. 409.

Third, in Canton, the court stated that for a state statute to be considered a "general law" for purposes of home rule analysis, the 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." 95 Ohio St.3d 149, at syllabus.

An additional area of conflict of law analysis is variance of the penalty established in the ordinance compared to the penalty established in the statute. When a local ordinance attempts to punish as a misdemeanor that which is already punished as a felony at the state level, the local ordinance is in conflict and must yield. The controlling case, exactly on point to the instant case, held

From what has been said, it would seem obvious that the offense of carrying concealed weapons is a felony under the statute relating to that subject, and an ordinance which makes the same offense a misdemeanor, punishable only as such, conflicts with the statute and is invalid.

We are aware that in the case of *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519, followed in other later cases decided by this court, it was declared that in determining whether a conflict exists between a statutory enactment and a municipal ordinance 'the test is whether the ordinance permits or licenses that which the statute forbids and prohibits and vice versa.' But surely this test is not exclusive. Although the ordinance in issue does not permit

what the statute prohibits, and vice versa, it does contravene the expressed policy of the state with respect to crimes by deliberately changing an act which constitutes a felony under state law into a misdemeanor, and this creates the kind of conflict contemplated by the Constitution. City of Cleveland v. Betts (1958), 168 Ohio St. 386, 389.

Plaintiffs' complaint also seeks broad injunctive relief. In order to be entitled to an injunction, a party must generally establish that they have a legal right to the relief requested, that the act to be restrained is wrongful or illegal, and that the party will be injured thereby. Injunction is considered an equitable remedy, despite appearing briefly in statute and civil rule, and is designed to guard against future injury rather than to redress prior injury. City of Cleveland v. Division 268 of Amalgamated Ass'n of St. Elec. Ry. & Motor Coach Emp. of America (1948), 84 Ohio App. 43, 45.

Argument

Plaintiffs are "persons" for the purposes of Ohio's Declaratory Judgment statute. Plaintiffs' rights and status are uncertain due to the conflict between Clyde's ordinance and HB12. There is a matter in controversy between Plaintiffs and Defendants and, absent this Court ruling, this uncertainty will continue for so long as said ordinance is in effect. The instant case is exactly the sort of case in controversy that is contemplated by Ohio's Declaratory Judgment statute. Unfortunately for Defendants, the decades of decisions rendered by Ohio's courts upholding gun control laws must now be applied against Clyde in striking down gun control laws.

As a preliminary matter undersigned counsel would state that this case involves a straightforward application of law and there are no material facts to contest. An ordinance and a statute exist in conflict, and this case should be resolved on a conflicts of law basis. The parties have stipulated to the material procedural matters and the parties want this case resolved as a question of law rather than upon some non-substantive basis. Summary judgment is very appropriate for the instant case.

The City of Clyde does have limited home rule authority under the Ohio Constitution, as set forth in Article XVIII § 3 et seq. These provisions allow Clyde to adopt local police regulations “as are not in conflict with the general laws.” Clyde’s status as a charter form of government is immaterial to Article XVIII § 3, and a charter neither expands nor contracts their powers under Article XVIII § 3. “It has long been settled that charter municipalities have no greater authority than non-charter municipalities to adopt police regulations which conflict with general laws of statewide application. *State ex rel. Mowrer v. Underwood* (1940), 137 Ohio St. 1, 17 O.O. 298, 27 N.E.2d 773.” Fairview Park v. Barefoot Grass Lawn Service, Inc. (1996) 115 Ohio App.3d 306, 312.

As stated above in Canton, the first step in this examination under Article XVIII § 3 is whether the ordinance conflicts with the statute. The second step, already clearly answered per the discussion above, is whether the ordinance is an exercise of police power or an exercise of

local self-government. The third step is whether the statute the ordinance is in conflict with is a general law of the state.

The regulation of firearms is an exercise of Police Power

In applying the applicable conflicts test, it makes more sense to start at step two than step one. After all, it does not matter if the ordinance is in conflict with a statute if the ordinance does not deal with the exercise of a police power. As stated above, a very long string of Ohio Supreme Court cases has consistently held that the regulation of firearms is a valid exercise of police power by state and local governments. All of these cases are on point and within the context of gun control regulations.

It is clear that Clyde's Ordinance No.2004-41 is promulgated under their police powers, and not under some inherent power of self-government. To argue otherwise is to argue that decades of Supreme Court precedent should be discarded simply because those precedents are now being used to strike down gun control laws rather than uphold them. This is an intellectual dishonesty that cannot pass any serious scrutiny. Gun control has been considered a police power for the last century or more of Ohio's judicial history, and the mere passage of gun rights legislation, at long last, should not in any way effect the validity of that precedent or reasoning.

Given that Clyde’s ordinance is clearly the exercise of a police power, and not the exercise of some inherent power of self-government, this Court must examine their ordinance in the framework of the conflict test promulgated under Article XVIII § III of the Ohio Constitution as enumerated by the Supreme Court in Canton.

Ordinance No. 2004-41 is an exercise of Police Power in conflict with HB 12

The first approach to examine whether an ordinance is in conflict with a statute is to determine whether one seeks to prohibit that which the other allows. “Specifically, does Ordinance No. 12-1984 allow anything that R.C. Chapter 3734 prohibits, or conversely, does Ordinance No. 12-1984 prohibit anything permitted by R.C. Chapter 3734?” Fondessy Enterprises, Inc. v. City of Oregon (1986), 23 Ohio St.3d 213, 217. “There can be no conflict unless one authority grants a permit or license to do an act which is forbidden or prohibited by the other.” Village of Struthers v. Sokol (1923), 108 Ohio St. 263, 268.

HB12 established R.C. § 2923.126, which provides, among other things, at paragraph (A), “Except as provided in division (B) and (C) of this section, a licensee who has been issued a license under section 2923.125 or 2923.1213 of the Revised Code **may carry a concealed handgun anywhere in this state** if the licensee carries a valid license and valid identification when the licensee is in actual possession of a concealed handgun.” (emphasis added.) Thus HB12 established an affirmative grant of a right to carry a concealed handgun, and not a mere

exception to the operation of the Revised Code sections prohibiting concealed carry of a handgun.

Compared to this is Clyde Ordinance No. 2004-41, which clearly states that a person may not carry a deadly weapon in Clyde parks, without regard to the person having a CHL. City parks are not an area proscribed by R.C. § 2923.126(B) or (C), or any other provision of the Revised Code. Clyde is attempting to rely on their police powers discussed earlier to prohibit concealed carry in their parks, as the only law that prohibits someone from carrying a concealed handgun in their parks is Ordinance No. 2004-41. Nothing could be more directly head-on in conflict with HB12, and the applicable case law could not be more on point.

As stated under the applicable test established in Fondessy & Struthers, reviewing Courts must examine whether the ordinance is attempting to prohibit that which the state has licensed or allowed. That is clearly the case with Ordinance No. 2004-41. The state law affirmatively grants the right to carry concealed handguns in city parks. The local ordinance seeks to prohibit that same conduct. Given this head-on conflict and the applicable law, the local ordinance must yield to the state law.

The second approach to examine whether there is a conflict between Clyde's ordinance and HB12 is that Clyde's ordinance attempts to punish the carrying of a loaded, concealed handgun as a misdemeanor, whereas R.C. § 2923.12(G)(1) establishes that carrying of a

concealed handgun, other than as provide for within the Revised Code, is a fourth degree felony. As stated above in City of Cleveland v. Betts (1958), 168 Ohio St. 386, 389, the Ohio Supreme Court has already ruled that municipalities may not attempt to punish concealed carry of weapons as a misdemeanor so long as the Revised Code punishes that same conduct as a felony. This case law clearly holds that municipalities are entirely without any legal authority to regulate the concealed carry of a handgun so long as state law punishes that same conduct as a felony. Clyde's ordinance, or any ordinance purporting to restrict the concealed carry of a handgun, must fail upon the application of this precedent.

HB 12 is a General Law of the State of Ohio

The last step in the analysis promulgated under Article XVIII § 3 is whether the state statute the ordinance conflicts with is a general law. In order to be a general law, the 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) 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." Canton, 95 Ohio St.3d 149, at syllabus.

Step 1 and 2 are basically inseparable, and should be considered together. HB 12 applies to all citizens in the State of Ohio who meet the qualifications set forth within the law. Further,

HB 12 applies to citizens of the 50 states who travel within Ohio if they have been issued a CHL by another state, and Ohio recognizes that state's CHL. The cases that distinguish general laws on the basis of the first two steps basically look toward whether the law is written such that the practical application is that it will only be applied in very limited areas. For instance, several anti-speed trap statutes have been struck down on the grounds that they applied only to municipalities that had x number of yards within their jurisdictions, and only a very small handful of municipalities would have been effected. (Linndale v. State (1999), 85 Ohio St.3d 52.) Equally important is the uniformity of content of the law, and whether the law logically fits into an area the state is already regulating. (Canton, 95 Ohio St.3d 149, 154.)

HB 12 is written to apply equally in all 88 counties in Ohio, and upon all citizens who meet the qualifications set forth. There are standardized procedures and qualifications set forth, and no discretion is permitted in the decision to issue or decline licenses. HB12 clearly applies equally throughout Ohio. When the Ohio Supreme Court looked at concealed carry regulations previously, the regulation of concealed carry was found to a valid exercise of legislative prerogative. "The General Assembly has determined that prohibiting the carrying of concealed weapons helps maintain an orderly and safe society. We conclude that that goal and the means used to attain it are reasonable." Klein , 99 Ohio St.3d 537, 541. The mere fact that the General Assembly is now regulating concealed carry of weapons by making limited provision for the carrying of concealed handguns does not effect the logic of the prior cases that held the

regulation of concealed carry was a valid legislative function of the Ohio General Assembly. Furthermore, the state was already clearly regulating this field.

Similarly, the Ohio Supreme Court previously looked at concealed carry regulations that applied only against “tramps.” Over a century ago the regulation of concealed carry was considered a general law.

It is conceded that the law is of a general nature. The test of uniform operation, and with respect to the required conformity to the 'law of the land,' and to the requirement of 'due process of law,' seems to be that if the law under consideration operates equally upon all who come within the class to be affected, *210 embracing all persons who are or may be in like situation and circumstances, and the designation of the class is reasonable, not unjust or capricious or arbitrary, but based upon a real distinction, the law does operate uniformly, and if, added to this, the law is enforced by usual and appropriate methods, the requirement as to 'due process of law' is satisfied. State v. Hogan (1900) 63 Ohio St. 202, *209. (emphasis added.)

The third step of the test, whether the law is an exercise of police power versus an attempt to limit local governmental powers, is largely disposed of in the discussion above. Regulation of firearms is the exercise of police powers. HB12 is meant to apply equally to everyone in the state. HB12 contains an affirmative grant of a license or right, and is not targeted as a restriction upon municipal power. The simple fact that the otherwise permissible operation of HB12 has the practical effect of restricting municipal power does not equate into HB12 being a restriction upon municipal powers for the purposes of this test.

Standard, uniform regulation of concealed carry with a license is needed throughout the state in order to effectively implement the license program. It is not reasonable, practical, or desirable to expect the 50,000+ license holders, and the countless others from other states traveling throughout Ohio, to keep track of several hundred sets of municipal regulations impacting their license to carry a concealed handgun. As the Supreme Court quoted in Canton 95 Ohio St.3d 149, *156, "[t]he meaning of this syllabus principle of law is that a statute which prohibits the exercise by a municipality of its home rule powers without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power." Clearly the overriding focus of HB12 is to implement licensed concealed carry on a statewide basis in Ohio, and the Supreme Court has already upheld the regulation of concealed carry of handguns as a valid exercise of authority by the General Assembly. The operative provisions of HB12 are targeted at implementing a licensing system, which is a statewide interest.

The fourth step of the general law test, that the law applies to citizens generally, is also easily disposed of. The operative provisions of HB12 apply against citizens and government officials alike, which is what is required to show the law prescribes a general rule of conduct upon citizens generally. It is not uniquely targeted at municipal actors any more than Ohio's driver's license law is. "Similarly, in this case, we hold that R.C. 3781.184(C) does not prescribe a rule of conduct upon citizens generally, because just as in *Youngstown* and *Linndale*, the statute applies to municipal legislative bodies, not to citizens generally." Canton , 95 Ohio St.3d 149,

156. In the instant case, the Canton court's holding is not a problem, because HB12 applies uniformly around the state against citizens and government actors equally, and against citizens generally. No cognizable argument can be advanced that HB12 applies only against municipal bodies.

Absent this Court granting the Injunction prayed for, Plaintiffs still risk having their lawful carry of concealed handguns interfered with

Plaintiffs' complaint seeks broad injunctive relief to prohibit Defendants from taking any action, including, but not limited to, adopting or continuing in force any ordinance, law, resolution, rule or regulation that contravenes Ohio R.C. § 2923.125 and § 2923.1213 et seq. or the clear intent of the General Assembly to enact a general law providing for the uniform, statewide licensing of the concealed carry of handguns, including the regulation of the places where a license holder may legally carry a concealed handgun. Unfortunately, the striking down of Ordinance No. 2004-41, by itself, will not resolve Plaintiffs' complaint for injunction.

Defendants have shown a stubborn propensity to disregard HB 12 with regard to citizens legally carrying concealed handguns within their municipal borders. The mere striking down of Defendants' illegal ordinance will not adequately protect Plaintiffs or similarly situated persons. Ordinance No. 2004-41, which enacted Codified Ordinance No. 923.10 on the face of the ordinance, but which might have actually been numbered Codified Ordinance No. 955.07, is just

the tip of the iceberg with regard to Defendants' available avenues to attempt to interfere with lawful licensed concealed carry of handguns within their municipal borders.

For instance, Codified Ordinance No. 955.01(B) gives the Recreation Board authority to adopt rules and regulations relating to the use of the City parks. Codified Ordinance No. 955.99 establishes penalties for violating park rules. The potential is practically limitless to establish any number of administrative bodies, delegate to them rule making authority, under the guise of adopting a "rule" against lawful concealed carry, while contemporaneously establishing a criminal ordinance for violation of an administrative rule. Criminalizing licensed conduct by having administrative bodies establish rules, and then criminally punishing the rules, versus passing an explicit law like Ordinance No. 2004-41 is a distinction without a difference. Indeed, even the mere posting of a sign purporting to ban firearms¹, without ANY LEGISLATIVE ACT AT ALL, would criminalize the carrying of concealed handguns by creating an offense of trespass under R.C. § 2911.21(A)(4).

Additionally, without injunctive relief, Defendants would be free to attempt to interfere with lawful concealed carry through the adoption of "pure gun" ordinances - ammunition regulations, magazine capacity regulations, "Saturday Night Special" regulations and other similar restrictions on the firearms used in the lawful carry of concealed handguns. Ohio's courts, at one time or another, have upheld these types of regulations on firearms/handguns in

pre-HB12 cases. (See, inter alia, Mosher, University Heights, Arnold, City of Akron v. White (1963), 250 N.E.2d 916, Photos v. City of Toledo (1969), 250 N.E.2d 916, City of East Cleveland v. Scales (1983), 10 OhioApp.3d 25.) In the post HB12 world, these types of regulations, all asserted under municipal police power, would interfere with the lawful carrying of concealed handguns within the municipal boundaries of Clyde just as much as Ordinance No. 2004-41, and would be in conflict and void for the exact same reasons stated above.

Absent broad injunctive relief as prayed for, Defendants will be free to attempt numerous alternative methods of criminalizing the otherwise legal carrying of a concealed handgun. The only practical, suitable relief to prevent this is a permanent injunction. The alternative would be to file a seemingly never-ending series of Declaratory Judgment actions or petitions for further relief pursuant to R.C. § 2721.09 as Defendants test each new avenue or loophole. As stated above, the test for injunction is generally that the party has the right to the relief requested, that the act sought to be restrained is unlawful, and that the party will be injured if the conduct continues. The burden placed upon Defendants by the injunction would be minimal, as they have not demonstrated the first iota of evidence for the need to regulate concealed carry license holders.

Plaintiffs have established above that persons holding a CHL are affirmatively granted the right to carry a concealed handgun anywhere in the state unless otherwise prohibited by the

¹ See attached exhibit A for an example of this behavior by Defendants.

Revised Code. (They have a right to the relief requested.) Plaintiffs have further established above that attempts to limit or criminally punish licensed concealed carry are in conflict with HB12 and therefore unenforceable. (The conduct to be restrained is unlawful.) It is also equally clear that the threatened arrest or prosecution of a person with a CHL who is attempting to rely upon state law will cause injury to the party involved. The likelihood of this happening is real, not speculative, and is demonstrated by the examples above. (There will be injury if the conduct continues.)

There is no reason not to preclude Defendants from further attempts to interfere with lawful concealed carry – Defendants have already demonstrated by adopting Ordinance No. 2004-41 that they do not agree with HB12 and wish to disregard it. Declining the requested injunction would place a citizen with a CHL in the position of having to rely upon the good will of Defendants versus relying upon an enforceable ruling from this Court. That is exactly the sort of situation the equity of injunction is designed to address. As an equitable remedy, injunction is imminently suited to this exact situation, and will place the burden, initiative, and cost where it belongs – upon the municipality seeking to interfere with citizens engaged in the lawful carry of concealed handguns.

Conclusion

Plaintiffs' complaint for Declaratory Judgment and Injunctive Relief presents no issue of material fact. The instant case is clearly a matter of law with undisputed facts – the existence of an ordinance and a statute. Applying the applicable case law, reasonable minds can come to but one conclusion, and that conclusion is adverse to Defendants. Ordinance No. 2004-41 should be struck down as being in conflict with HB12, and Defendants should be restrained from any further actions attempting to interfere with the lawful carry of concealed handguns within their municipal borders. To rule otherwise will allow an unmanageable patchwork of “here but not there” laws throughout Ohio.

The instant case is clearly the legal precipice² for licensed concealed carry in Ohio. From this point forward either persons with a concealed carry license will be able to rely upon their status under state law without regard to the politics of local governments, or they will be facing unknowing criminal prosecution every time they pass over a municipal incorporation boundary limit. License holders should be allowed to travel the state's roads without constantly facing

² n **The brink of a dangerous or disastrous situation.** (*The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company.*)

harassment and threat of criminal charges from activist local governments that are attempting what amounts to a referendum by fiat.³

Daniel T. Ellis 0038555
Fuller & Henry Ltd
One Seagate, Suite 1700
P.O. Box 2088
Toledo, Ohio 43603-2088
Phone: (419) 247-2544
Fax: (419) 247-2665
DTE@FullerHenry.com

Attorneys for Plaintiffs

L. Kenneth Hanson, III 0064978
Firestone & Brehm, Ltd
15 W. Winter Street
Delaware, Ohio 43015
740.363.1213
740.369.0875 (fax)
khanson@fbylaw.com

Attorneys for Plaintiffs

³ n **An arbitrary order or decree.** (*The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company*) **An authoritative but arbitrary order <a brazen act of judicial fiat —L. H. Tribe>.** (*Merriam-Webster's Dictionary of Law, © 1996 Merriam-Webster, Inc.*)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served via ordinary mail, postage prepaid, this 28 day of April, 2005, upon the following:

Barry W. Bova, Esq.
817 Kilbourne Street
P.O. Box 448
Bellevue, OH 44811

SHARON A. JENNINGS
HOLLY J. HUNT * Lead Counsel
FRANK M. STRIGARI
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

Daniel T. Ellis 0038555
Fuller & Henry Ltd

L. Kenneth Hanson, III 0064978
Firestone & Brehm, Ltd