

5. The Plaintiff brings these claims under R.C. Chapter 2721 seeking a declaration that Am. Sub. H.B. 228 of the 132nd General Assembly, to the extent it amends R.C. 9.68, is unconstitutional

6. The Plaintiff further brings these claims under R.C. Chapter 2721 seeking a declaration that R.C. 9.68 is unconstitutional.

7. The Plaintiff also brings this action in order to have this Court issue a permanent injunction prohibiting the enforcement of Am. Sub. H.B. 228 and R.C. 9.68.

8. This Court has jurisdiction to hear the Plaintiff's challenges to the constitutionality of Am. Sub. H.B. 228 and R.C. 9.68.

9. Venue is proper in Franklin County since the Defendant maintains their principal offices in Franklin County, Ohio.

Background

10. Ohio's first Constitution was adopted in 1803. That Constitution gave nearly complete control of government to a General Assembly. For example, the General Assembly had the power to appoint judges and other government officials. *See, e.g.*, Ohio Constitution of 1803, Article III, Section 8.

11. Due to historical abuse by the legislative branch of government, Ohio adopted a new constitution in 1851 that greatly limited the power of the legislative branch of government.

12. Although one of the goals of the 1851 Constitution was to curb the excessive powers of the General Assembly, the 1851 Constitution did not completely succeed in doing so.

13. Despite losing authority, the General Assembly continued to interfere in municipalities and the manner in which they were governed.

14. In 1912, the citizens of the State of Ohio held a constitutional convention.

15. One of the potential constitutional amendments drafted during this convention was Article XVIII – Municipal Corporations.

16. Proposed Article XVIII was submitted to the electors of the State and was ultimately adopted and added to the Constitution.

17. Article XVIII, Section 3 of the Ohio Constitution provides that "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

18. Article XVIII, Section 7 of the Ohio Constitution provides that “Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.”

19. The citizens of Ohio, acting as Sovereign, prohibited the Ohio General Assembly from interfering with the rights of any municipality to exercise their powers of local self-government except in very limited, enumerated circumstances.

Local, State, and National Public Policy Concerns

20. Nationally, gun violence has reached epidemic proportions.

21. According to the Centers for Disease Control and Prevention (“CDC”), 39,773 people were killed by firearms in the United States in 2017, the last year that statistics are available. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *2017, United States Firearm Deaths and Rates per 100,000*, <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html> (accessed Mar. 4, 2019).

22. In 2017, there were approximately 12 deaths per 100,000 people in the United States due to firearms. *Id.*

23. Comparatively, in 1999, the CDC reported 28,874 deaths from a firearm or approximately 10.3 deaths per 100,000 people. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *1999, United States Firearm Deaths and Rates per 100,000*, <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html> (accessed Mar. 4, 2019).

24. In 2017, deaths from a firearm nationally reached the highest level in the entire time since the Center for Disease Control started keeping statistics about firearm deaths in 1979. Gstalter, *CDC Report: U.S. Gun Deaths Reach Highest Level in Nearly 40 Years*, The Hill (Dec. 13, 2018), available at <https://thehill.com/policy/healthcare/421306-cdc-report-us-gun-deaths-reach-highest-level-in-nearly-40-years> (accessed Mar. 4, 2019).

25. This ever-increasing death rate from firearms has also affected the State of Ohio.

26. According to the CDC, 1,116 people in Ohio were killed by a firearm in 2005. Centers for Disease Control and Prevention, National Vital Statistics Reports Vol. 56, No. 10, *Deaths: Final Data for 2005* (April 24, 2008).

27. In 2014, the CDC reported that 1,211 people were killed by a firearm in Ohio. Centers for Disease Control and Prevention, National Vital Statistics Reports Vol. 65, No. 4, *Deaths: Final Data for 2014* (June 30, 2016).

28. In 2015, that number had risen to 1,397. Centers for Disease Control and Prevention, National Vital Statistics Reports Vol. 66, No. 6, *Deaths: Final Data for 2015* (November 27, 2017).

29. In 2016, the CDC reported that the number of people killed by a firearm in Ohio had further risen to 1,524. Centers for Disease Control and Prevention, National Vital Statistics Reports Vol. 67, No. 5, Deaths: Final Data for 2016 (July 26, 2018).

30. The CDC reported that 1,589 people were killed by a firearm in Ohio in 2017. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *2017, Ohio Firearm Deaths and Rates per 100,000*, <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html> (accessed Mar. 4, 2019).

31. Similarly, in 2017, the City of Columbus experienced 143 homicides, its deadliest year in the City's 205-year history. Burger, *Drugs, Gangs Fuel Record Columbus Homicide Numbers*, Columbus Dispatch (Jan. 2, 2018), available at <https://www.dispatch.com/news/20180102/drugs-gangs-fuel-record-columbus-homicide-numbers> (accessed Mar. 4, 2019).

32. An overwhelming 83 percent of the homicide victims in Columbus in 2017 were shot to death. *Id.*

33. In 2017, 111 of the City of Columbus' homicide victims were African-American. *Id.*

34. The Columbus Police Department reported that the level of gun violence in the city had not been seen since the crack cocaine epidemic of the early 1990s. *Id.*

35. Likewise, in 2017, the Columbus Division of Police seized over 2,750 firearms, approximately 300 more than they had seized in 2016 and approximately 500 more than they seized in 2015. *Id.*

36. Research from Columbus' own Nationwide Children's Hospital also shows that nationally, almost 1,300 children under the age of 18 die each year from gun violence. Nationwide Children's Hospital, *Gun Safety*, <https://www.nationwidechildrens.org/research/areas-of-research/center-for-injury-research-and-policy/injury-topics/general/gun-safety> (accessed Mar. 4, 2019).

37. A study done by the Americans for Responsible Solutions Foundation determined that the more than 2,500 shootings that occur annually in the State of Ohio impose a serious drain on the State's economy. That study noted that the initial price tag for gun violence in the State is \$2.7 billion per year. Americans for Responsible Solutions Foundation, *The Economic Cost of Gun Violence in Ohio: A Business Case for Action*, <https://lawcenter.giffords.org/wp-content/uploads/2017/05/The-Economic-Cost-of-Gun-Violence-in-Ohio.pdf> (accessed Mar. 4, 2019).

38. The study went on to find that when one includes non-economic factors, such as reduced quality of life, the total economic impact of gun violence in the State of Ohio is \$7.3 billion. *Id.*

39. The study further determined that the true cost of gun violence in Ohio is actually much higher than that because the \$7.3 billion figure fails to include things such as lost business opportunities, lowered property values, and reductions in tax bases. *Id.*

40. Perhaps the most alarming gun violence statistics deal with domestic violence and intimate partner violence.

41. Abused women are five times more likely to be killed by their abuser if the abuser owns a firearm. Giffords Law Center to Prevent Gun Violence, *Domestic Violence & Firearms*, <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/> (accessed Mar. 4, 2019).

42. Women in the United States are 16 times more likely to be murdered with a firearm than women in peer countries. *Id.*

43. Between 1980 and 2008, more than two-thirds of spouse and ex-spouse homicide victims were killed by firearms. *Id.*

44. From January 2009 through July 2014, 57% of all mass shootings involved killing a family member, or a current or former intimate partner of the shooter. *Id.*

45. On October 1, 2017, a gunman opened fire on a crowd of concert goers at a music festival on the Las Vegas strip killing 58 and injuring 869 individuals.

46. On June 12, 2016, 49 people were killed and another 53 injured at a mass shooting at the Pulse Nightclub in Orlando, Florida.

47. Between May of 2017 and February 2018, three local law enforcement officers were killed in Central Ohio by individuals who had previously committed actions of domestic violence and who were illegally in possession of a firearm.

48. Against this backdrop, the Bureau of Alcohol, Tobacco, Firearms, and Explosives has decided that it is time to prohibit possession of bump stocks. 83 Fed. Reg. 66514.

49. And former Governor John Kasich repeatedly attempted to persuade the General Assembly that it is time to pass some common sense gun regulation.

The Time for Action Has Arrived

50. In the wake of all of this senseless killing, the State of Ohio has failed to take any steps to curb the violence.

51. The City of Columbus had previously passed an assault weapons ban.

52. The City ultimately repealed the ban after it was threatened with litigation arising under R.C. 9.68.

53. In May of 2018, the City passed specific, commonsense firearms ordinances in an attempt to help curb the violence that has been rampant both locally and nationally.

54. During a press conference announcing the introduction of these ordinances, Columbus officials noted that they believed they were constrained from doing more by R.C. 9.68.

55. The City of Columbus has in the past, currently does in the present, and will, in the future, choose to exercise its constitutionally protected right to pass ordinances aimed at regulating firearms, ammunition, or firearm accessories.

The General Assembly and Am. Sub. H.B. 228

56. On May 16, 2017, members of the Ohio House of Representatives introduced H.B. 228.

57. H.B. 228 was entitled a bill to amend certain sections of the Ohio Revised Code “to assign to the prosecution the burden of disproving a self-defense or related claim, to expand the locations at which a person has no duty to retreat before using force under both civil and criminal law, and to modify the Concealed Handgun Licensing Law regarding a licensee’s duty to keep the licensee’s hands in plain sight, the penalties for illegally carrying a concealed firearm or improperly handling firearms in a motor vehicle, and the posting of warning signs regarding possession of weapons on specific premises.”

58. As introduced, H.B. 228 had nothing to do with local home rule powers and did not attempt to amend R.C. 9.68 in any fashion.

59. H.B. 228 was assigned to the House Federalism and Interstate Relations Committee and that committee reported out a substitute version of the bill.

60. Sub. H.B. 228 included amendments to R.C. 9.68 and its new title included language “to modify the state preemption of local firearm regulations and related remedies.”

61. On November 14, 2018, the House passed Am. Sub. H.B. 228.

62. Am. Sub. H.B. 228 was introduced in the Senate on November 19, 2018.
63. On December 6, 2018, the Senate passed an amended version of Am. Sub. H.B. 228.
64. On that same date, the House voted to adopt the Senate Amendments.
65. Governor John Kasich vetoed Am. Sub. H.B. 228 on December 19, 2018.
66. On December 27, 2018, both the House and Senate voted to override the Governor's veto.
67. As enrolled, Am. Sub. H.B. 228 amended R.C. 9.68, in pertinent parts, as follows:

(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~~, manufacture, taxation, keeping, and reporting of loss or theft of firearms, their components, and their ammunition. The general assembly also finds and declares that it is proper for law-abiding people to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves or others. Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, including by any ordinance, rule, regulation, resolution, practice, or other action or any threat of citation, prosecution, or other legal process, may own, possess, purchase, sell, transfer acquire, transport, store, carry, sell, transfer, manufacture, or keep any firearm, part of a firearm, its components, and its ammunition. Any such further license, permission, restriction, delay, or process interferes with the fundamental individual right described in this division and unduly inhibits law-abiding people from protecting themselves, their families, and others from intruders and attackers and from other legitimate uses of constitutionally protected firearms, including hunting and sporting activities, and the state by this section preempts, supersedes, and declares null and void any such further license, permission, restriction, delay, or process.

(B) A person, group, or entity adversely affected by any manner of ordinance, rule, regulation, resolution, practice or other action enacted or enforced by a political subdivision in conflict with division (A) of this section may bring a civil action against the political subdivision seeking damages from the political subdivision, declaratory relief, injunction relief, or a combination of those remedies. Any damages awarded shall be awarded against, and paid by, the political subdivision. In addition to any actual damages awarded against the political subdivision and other relief provided with respect to such an action, the court shall award ~~costs and~~ reasonable attorney fees ~~expenses~~ to any person,

group, or entity that brings the action, to be paid by the political subdivision, if either of the following applies:

(1) The person, group, or entity prevails in a challenge to a~~an~~the ordinance, rule, regulation, resolution, practice, or action as being in conflict with division (A) of this section.

(2) The ordinance, rule, regulation, resolution, practice, or action or the manner of its enforcement is repealed or rescinded after the civil action was filed but prior to a final court determination of the action.

**First Cause of Action
(Violation of the Separation of Powers)**

68. The Plaintiff restates and reincorporates by reference each and every allegation contained in Paragraphs 1 through 67 of the Complaint.

69. The Separation of Powers doctrine is implicit within the organization of the Ohio Constitution.

70. By declaring any actions of a municipality that allegedly interferes with or “unduly inhibits” individuals from “protecting themselves, their families, and others from intruders and attackers and from other legitimate uses of constitutionally protected firearms” preempted, superseded, and null and void, Am. Sub. H.B. 228 and R.C. 9.68 engage directly in a judicial function.

71. Am. Sub. H.B. 228 and R.C. 9.68 violate the Separation of Powers doctrine.

**Second Cause of Action
(Violation of Article II, Section 32 of the Ohio Constitution)**

72. The Plaintiff restates and reincorporates by reference each and every allegation contained in Paragraphs 1 through 71 of the Complaint.

73. Article II, Section 32 of the Ohio Constitution provides that “[t]he general assembly shall grant no divorce, nor exercise any judicial power not herein expressly conferred.”

74. By declaring any action of a legislative branch of government null and void, the General Assembly has exercised a judicial power not conferred by the Ohio Constitution.

75. Such action violates the express prohibition contained in Article II, Section 32 of the Ohio Constitution.

76. As a result, Am. Sub. H.B. 228 and R.C. 9.68 violate Article II, Section 32 of the Ohio Constitution.

**Third Cause of Action
(Violation of Home Rule Authority)**

77. The Plaintiff restates and reincorporates by reference each and every allegation contained in Paragraphs 1 through 76 of the Complaint.

78. Am. Sub. H.B. 228 and R.C. 9.68 by their express terms attempt to prohibit any local legislation concerning the “ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, other transfer, manufacture, taxation, keeping, and reporting of loss or theft of firearms, their components, and their ammunition.”

79. Am. Sub. H.B. 228 and R.C. 9.68 are not general laws.

80. Am. Sub. H.B. 228 and R.C. 9.68 unconstitutionally interfere with the constitutionally guaranteed Home Rule Authority of the City of Columbus

**Fourth Cause of Action
(Violation of Home Rule Authority)**

81. The Plaintiff restates and reincorporates by reference each and every allegation contained in Paragraphs 1 through 80 of the Complaint.

82. In *Dayton v. State*, 151 Ohio St.3d 168, 2017-Ohio-6909, the Ohio Supreme Court found three separate provisions of the Ohio Revised Code to unconstitutionally interfere with the rights of municipalities to use traffic cameras because they were not general laws.

83. The plurality opinion reinforced the need to examine each challenged statute individually and not as part of a complete regulatory scheme.

84. This decision has served as implicitly overruling the Supreme Court’s opinion in *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, finding R.C. 9.68 to be constitutional.

85. R.C. 9.68 as originally enacted is not a general law under the holdings of *Dayton*.

86. R.C. 9.68 unconstitutionally interferes with the constitutionally guaranteed Home Rule Authority of the City of Columbus.

**Fifth Cause of Action
(Violation of Home Rule Authority)**

87. The Plaintiff restates and reincorporates by reference each and every allegation contained in Paragraphs 1 through 86 of the Complaint.

88. Am. Sub. H.B. 228 and R.C. 9.68 purport to prohibit any municipality from passing any ordinance, rule, or regulation concerning the manufacturing of firearms and ammunition. R.C. 9.68(A).

89. For purposes of the zoning code, Am. Sub. H.B. 228 and R.C. 9.68 contain limited exceptions.

90. Specifically, Am. Sub. H.B. 228 and R.C. 9.68 provide that a municipality is permitted to pass “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.” R.C. 9.68(D)(1).

91. Similarly, Am. Sub. H.B. 228 and R.C. 9.68 allow a municipality to pass 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.” R.C. 9.68(D)(2).

92. The City of Columbus has the constitutionally protected Home Rule Authority to pass a comprehensive zoning code.

93. Pursuant to that constitutional authority, the City has passed such a code.

94. The City’s zoning code is contained in Title 33 of the Columbus City Code.

95. The City of Columbus has authorized several different districts inside the city including, but not limited to, multiple use districts, residential use districts, apartment residential use districts, manufactured home park districts, planned residential and multi-family use districts, institutional use district, commercial use districts, manufacturing use districts, and parking use districts.

96. Under the City’s zoning codes, a firearms or ammunition manufacturer is prohibited from locating in the residentially zoned areas of the City.

97. Am. Sub. H.B. 228 and R.C. 9.68 contain a prohibition barring the City of Columbus from passing any type of zoning ordinance that would bar firearms or ammunition manufacturing from occurring in these residential areas.

98. Based upon the plain language of Am. Sub. H.B. 228 and R.C. 9.68, the City of Columbus would be required to allow a firearms manufacturer or ammunition manufacturer to operate in a residential neighborhood next to housing or schools.

99. Am. Sub. H.B. 228 and R.C. 9.68 violate the Home Rule Authority of the City of Columbus.

**Sixth Cause of Action
(Violation of Home Rule Authority)**

100. The Plaintiff restates and reincorporates by reference each and every allegation contained in Paragraphs 1 through 99 of the Complaint.

101. Am. Sub. H.B. 228 and R.C. 9.68 violate the constitutionally protected Home Rule Authority of the City of Columbus.

**Seventh Cause of Action
(Void for Vagueness)**

102. The Plaintiff restates and reincorporates by reference each and every allegation contained in Paragraphs 1 through 101 of the Complaint.

103. Am. Sub. H.B. 228 and R.C. 9.68 fail to provide sufficient notice of their prescriptions to facilitate compliance by persons of ordinary intelligence and are not specific enough to prevent official arbitrariness or discrimination in its enforcement.

104. Furthermore, through their prohibitions, Am. Sub. H.B. 228 and R.C. 9.68 are directed at a constitutionally protected right, namely the right of a municipality to engage in home rule.

105. Am. Sub. H.B. 228 and R.C. 9.68 are void for vagueness.

106. WHEREFORE, the Plaintiff respectfully requests that this Court issue the following relief:

- a. A declaration under R.C. Chapter 2721 that Am. Sub. H.B. 228 and R.C. 9.68, both in its original and amended forms, violate Article XVIII, Sections 3 and 7 of the Ohio Constitution;
- b. A declaration under R.C. Chapter 2721 that Am. Sub. H.B. 228 and R.C. 9.68 are unconstitutional because they violate the Separation of Powers doctrine;
- c. A declaration under R.C. Chapter 2721 that Am. Sub. H.B. 228 and R.C. 9.68 violate Article II, Section 32 of the Ohio Constitution;
- d. A declaration under R.C. Chapter 2721 that Am. Sub. H.B. 228 and R.C. 9.68 are unconstitutional under the Ohio Constitution because they are void for vagueness;

- e. A preliminary and permanent injunction against Am. Sub. H.B. 228 and R.C. 9.68 enjoining them and any predecessor version of R.C. 9.68;
- f. An order granting the Plaintiff their costs and attorneys fees;
- g. Any other relief that this Court deems just and appropriate.

Respectfully,

**CITY OF COLUMBUS, DEPARTMENT OF LAW
ZACH KLEIN**

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