IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

CITY OF COLUMBUS,	:	
	:	**Case No. _____**
Plaintiff,	:	
	:	**Judge _____**
v.	:	
	:	
STATE OF OHIO,	:	
	:	
Defendant.	:	
	:	

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Now comes Plaintiff, City of Columbus, pursuant to Ohio Civ.R. 65, moves this Court to issue a preliminary injunction against Am. Sub. H.B. 228 and R.C. 9.68. A memorandum in support is attached.

Respectfully,

CITY OF COLUMBUS, DEPARTMENT OF LAW
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Chairman of the Municipal Government Committee, in presenting Article XVIII, Section 3 to the Ohio Constitutional Convention of 1912, presented the following from a legal brief prepared for the committee:

> This is a valuable agreement, especially in matters of police regulation. In legislation of this character it is the duty of the general assembly to enact laws, general in form, which will apply to all parts and sections of the state. In doing so it can do little more than set a standard below which no locality must fall. To enact a general police code which would provide the requisite regulation and protection for communities widely different in character and population is an obvious impossibility. The true solution of this difficult problem is found in the section proposed above [Article XVII, Section 3]. Under such a provision the municipalities of the state, building upon the foundation laid by the general assembly, could provide themselves with a system of police and other regulations which would fit their peculiar needs.

Proceedings and Debates of the Constitutional Convention of the State of Ohio – 1912, 1468.

Since the adoption of Article XVIII, the Ohio Constitution has preserved the right of municipalities to serve as the local testing ground of democracy. It assures local government the right to best serve its population by promulgating ordinances that make the most sense for the people that live in that particular locale. That same constitution also serves to protect each sphere of government from intrusion from the other spheres of government.

By passing Am. Sub. H.B. 228 and R.C. 9.68, the General Assembly has taken it upon itself to tell the City of Columbus how to best manage the affairs of its citizens. The General Assembly has also unconstitutionally limited the legislative power of municipalities. But it has not stopped there. It has also usurped the role of the judicial branch of government by declaring actions of the City null and void. Finally, it passed a law that contains no standards for

enforcement and subjects local governments to ruinous expenses if they attempt to exercise their constitutionally protected rights.

The City of Columbus respectfully requests that this Court restore the constitutional balance that has been intruded upon by the General Assembly and give back to the City its constitutional right to manage its own affairs without interference or command.

II. STATEMENT OF FACTS

On December 27, 2018, the Ohio General Assembly overrode Governor John Kasich's veto of Am. Sub. H.B. 228. (Attached as Exh. A). That bill, in part, makes significant changes to R.C. 9.68 and most of those changes become effective on March 28, 2019. Current R.C. 9.68, entitled "Right to bear arms – challenge to law," generally states that a person's right to bear arms shall not be further restricted except as provided by state and federal law. R.C. 9.68(A). It also awards costs and attorney fees to anyone who "prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section." R.C. 9.68(B). Am. Sub. H.B. 228 amends R.C. 9.68 in significant ways. First, it expands the ways in which a municipality cannot regulate firearms, including through limitations on manufacturing and taxation. Amended R.C. 9.68(A). Second, Am. Sub. H.B. 228 "declares null and void any such further license, permission, restriction, delay, or process" related to firearms. *Id.* As well, the legislation expands who can bring an action to challenge an "ordinance, rule, regulation, resolution, practice, or other action" of a political subdivision that might conflict with R.C. 9.68 and increases the penalties if a political subdivision loses such an action. Amended R.C. 9.68(B) and (C)(3).

The City of Columbus has in the past regulated firearms inside its municipal boundaries. The City has been sued in the past for exercising its Home Rule Authority and is currently litigating two ordinances it has passed relating to firearms and their accessories. It currently

regulates firearm accessories. It intends to regulate firearms, their components, and their ammunition in the future. The City has, currently will, and in the future most certainly will exercise its home rule authority in a way that will subject it to damages under R.C. 9.68. Thus, the City has experienced, and will continue to experience, harms as a result of R.C. 9.68 and Am. Sub. H.B. 228. The City of Columbus comes before this Court in order to vindicate its constitutional rights and to protect the province of the courts in this State to say what the law is.

III. LAW AND ARGUMENT

A. Standard of Review

The purpose of a preliminary injunction "is to preserve the status quo of the parties pending a final adjudication of the case upon the merits." *AK Steel Corp. v. ArcelorMittal USA, LLC*, 2016-Ohio-3285, 55 N.E.3d 1152, ¶ 9 (12th Dist.). The test for a preliminary injunction is well known. A party seeking a preliminary injunction must show (1) a substantial likelihood of success on the merits; (2) irreparable harm if the injunction is not granted; (3) third parties will not be unjustifiably harmed if the injunction is granted; and (4) the public interest will be served by the injunction. *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co.*, 109 Ohio App.3d 786, 790, 673 N.E.2d 182 (10th Dist. 1996) (citations omitted). Of course, none of these four factors are dispositive and the courts should balance them. *Escape Enters., Ltd. v. Gosh Enters., Inc.*, 10th Dist. Franklin Nos. 04AP-834 and 04AP-857, 2005-Ohio-2637, ¶ 48. In cases where there is a strong likelihood of success on the merits, an injunction should issue even if there is a weak showing of irreparable harm. *Cleveland v. Cleveland Elec. Illum. Co.*, 115 Ohio App.3d 1, 14, 684 N.E.2d 343 (8th Dist. 1996). In this case, the City has a strong likelihood of success on the merits. The City also meets the other three requirements for a preliminary

injunction. As a result, this Court should issue a preliminary injunction against Am. Sub. H.B. 228 and R.C. 9.68.

B. The City Has a Substantial Likelihood of Success on the Merits of its Claim that R.C. 9.68 and Am. Sub. H.B. 228 Violate the Home Rule Provisions of the Ohio Constitution.

The City of Columbus has a constitutionally protected right to home rule. Article XVIII, Section 3 of the Ohio Constitution provides that "[m]unicipalities shall have the 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." In addition, a chartered municipality such as Columbus may exercise all other powers of local self-government. Ohio Constitution, Article XVIII, Section 7. A municipality exceeds its powers under the Home Rule Amendment and a state statute takes precedence over a local ordinance if "(1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute." *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, ¶ 17. To qualify as a "general law" for the purposes of the Home Rule analysis, a 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." *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, syllabus. If a statute is not a general law, then it is "an unconstitutional attempt to limit the legislative home-rule powers" of municipalities. *Id* at ¶ 10. R.C. 9.68, both in its original form and as amended by Am. Sub. H.B. 228, violates Columbus' constitutional right to Home Rule because it is not a general law.

1. Historically, the Ohio Supreme Court has rejected attempts by the General Assembly to grant or limit the legislative power of municipalities instead of prescribing rules of conduct upon citizens generally.

Almost immediately after the passage of the Home Rule Amendment, the Supreme Court found that the General Assembly had violated the rights of Ohio municipalities. In *Fremont v. Keating*, 96 Ohio St. 468, 118 N.E. 114 (1917), the Court addressed the Home Rule Amendment and potential conflicts with State law for the first time. In that case, the City of Fremont had charged the defendant with violating a city ordinance regulating speed limits. According to the Court, the city code and the general code both limited the operation of motor vehicles within the city to eight miles per hour or less but with different punishments. *Id.* at 469-70. However, the General Code also contained a separate provision stating that "local authorities shall not regulate the speed of motor vehicles by ordinance, by-law, or resolution." *Id.* at 470 citing G.C. 6307. The Court briskly and summarily ruled that G.C. 6307 was unconstitutional. The Court noted that "[i]t is sufficient to say that the general assembly of Ohio cannot deprive a municipality of its constitutional rights. This section is clearly in violation of Section 3 of Article XVIII of the Constitution of Ohio, and void." *Id.*

Similarly, in *Youngstown v. Evans*, 121 Ohio St. 342, 168 N.E. 844 (1929), the Court was faced with a State law that concerned trafficking in intoxicating liquors. That code provided that "all municipal corporations shall have general power 'to make the violation of ordinances a misdemeanor, and to provide for the punishment thereof by fine or imprisonment, or both, but such fine shall not exceed five hundred dollars and such imprisonment shall not exceed six months.'" *Id.* at 344 quoting G.C. 3628. The cities of Youngstown and Cleveland both had municipal ordinances that provided for penalties in excess of this statutory limit.

The Court noted that "[p]rior to the enactment of Sections 3 and 7 of Article XVIII of the Ohio Constitution in 1912, above code section [G.C. 3628] was allpowerful and supreme in its regulation of municipal law making. The amendments of 1912 necessarily operated as a repeal of any statutes then existing, in conflict therewith." *Id.* at 345. The Court was very clear that the Home Rule amendments of 1912 greatly redefined the relationship between the State and municipal corporations.

As an example of how that relationship had been redefined, the Court simply asked whether the General Assembly could pass a law providing "for a complete prohibition upon municipal legislation. Manifestly such a law would not be effective to take away the power conferred upon municipalities by the plain provisions of the Constitution." *Id.* at 346. The Court went on to ask whether the General Assembly could pass a law mandating that "municipalities should not impose any fine in excess of one dollar for violation of any police or sanitary ordinance, and that it prohibited punishment by imprisonment altogether. No one would contend that such an indirect effort would be in any wise different in effect from a plain prohibition." *Id.* The Supreme Court again emphasized that under the Home Rule Amendment, the General Assembly did not have the authority to prohibit municipal legislation in the exercise of the municipality's police powers. Such a lack of authority by the General Assembly was true whether the state law directly barred municipal legislation or if it put an indirect limit on what a municipality could do.

Throughout the Twentieth Century, the Ohio Supreme Court continued protecting municipalities from attempts by the General Assembly to infringe on their constitutionally protected rights to adopt and enforce local regulations. For example, the General Assembly passed Ohio Revised Code Sections 715.63 and 715.64 regulating municipal licensing of

peddlers. *West Jefferson v. Robinson*, 1 Ohio St.2d 113, 115-16, 205 N.E.2d 382 (1965). The Court noted that these laws did not license, prohibit, or regulate the activity of peddlers themselves, only the power of municipalities to do adopt such regulations. *Id.* at 118. Relying on *Fremont* and *Youngstown*, the Court held they were not "general laws" as set forth in Article XVIII, Section 3 of the Ohio Constitution. *Id.* at 116-18.

More recently, the General Assembly attempted to prohibit municipalities from issuing speeding tickets on an interstate freeway if the municipality: (1) had less than 800 yards of freeway within its jurisdiction; (2) the local law enforcement officer needed to travel outside the jurisdiction to enter the freeway; and (3) the local law enforcement officer entered the freeway with the primary purpose of issuing speeding citations, such a law was unconstitutional. *Village of Linndale v. State*, 85 Ohio St.3d 52, 706 N.E.2d 1227 (1999), syllabus.

In *Linndale*, the Supreme Court noted the two meanings of "general law" for purposes of the Home Rule amendment. "'[T]he words 'general laws' as set forth in Section 3 of Article XVIII of the Ohio Constitution means [sic] statutes setting forth police, sanitary or similar regulations and not *statutes which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations.*'" *Id.* at 54 quoting *W. Jefferson*, 1 Ohio St.2d 113 at paragraph three of the syllabus (emphasis original). The Court observed that it has also "defined general laws as those operating uniformly throughout the state, prescribing a rule of conduct on citizens generally, and operating with general uniform application throughout the state under the same circumstances and conditions." *Id*.

The Court held that because a municipality's ability to regulate traffic comes from the Ohio Constitution, "a statute that, like R.C. 4549.17, purports only to limit this constitutionally

granted power is not a 'general law.'" *Id.* at 55. The Court determined that the law at issue was simply a limit on the legislative powers. "It is a statute that says, in effect, certain cities may not enforce local regulations; precisely the type of statute *West Jefferson* denounced. Moreover, this enactment does not prescribe a rule of conduct upon citizens generally as required by this court." *Id.* As a result, the Court found that the statute was unconstitutional under the Home Rule Amendment. Thus, for decades the Court consistently and systematically rejected State laws attempting to grant or limit the legislative powers of municipalities.

2. In analyzing the Home Rule Amendment, the Ohio Supreme Court has also historically required an actual conflict to exist between a municipal ordinance and a State law on a particular matter.

Very early on, the Ohio Supreme Court took a dim view of the argument that the General Assembly could simply pass what it hoped to be a "general law" in order to nullify the power of municipalities to legislate in an area. Turning back to the *Youngstown* case, the Court pointed out that the law at issue prohibiting a municipality from passing an ordinance that provided greater penalties than provided in the state law was being defended as purely a general law. "It is insisted, however, that Section 3628 is a general law, and that the Constitution framers left with the Legislature the power to nullify the constitutional provisions." *Youngstown*, 121 Ohio St. at 346. The Court summarily rejected such an argument. "Necessarily, the conflict which limits the municipal local self-government must relate to a conflict with state legislation on the same subject matter. Any conflict with general legislative policies, or any conflicts between matters of local concern, and therefore pertaining to local self-government, such as misdemeanors, on the one hand, and matters of general concern, and therefore pertaining to the peace and dignity of the entire state, such as felonies, on the other hand, could not have been in the minds of the Constitution framers." *Id.* at 346-47. Thus, as early as 1929, the Supreme

Court understood that there must be a real and substantial conflict between specific municipal ordinances and specific state law. It was also understood that for the purposes of Home Rule conflict analysis, the State could not create a conflict and attempt to pre-empt municipal home rule authority by simply passing general legislative policies.

Perhaps the most illuminating early decision relating to the home rule authority of political subdivisions was *Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923). In that case, two individuals were charged by separate municipalities for violating ordinances prohibiting the manufacture and sale of liquor. The issue before the Court concerned the validity of the municipal ordinances. *Id.* at 265. The Court further broke that down to: (1) whether the cities had the right to enact or enforce ordinances prohibiting the manufacture and sale of intoxicating liquor and (2) if municipalities had such power, whether the specific ordinances at issue were in conflict with the general laws of the State. *Id.* The Court quickly answered the first portion of the question in the affirmative finding that "municipalities may enact and enforce ordinances, the provisions of which are not inconsistent with the general laws of the state, prohibiting the manufacture, possession or sale of intoxicating liquor for beverage purposes and the keeping of a place therein where intoxicating liquors are manufactured, sold, furnished, etc., for beverage purposes.'" *Id.* at 267 quoting *Heppel v. Columbus*, 106 Ohio St. 107, 140 N.E. 169 (1922), syllabus.

The Court then turned to see if there was a conflict between the local ordinances and the State's law. It first noted that both the ordinances and the State statute were quite lengthy and it was unreasonable to quote them or to make comparisons about them in the Court's opinion. *Id.* at 267. "It is sufficient to say that a careful examination of all of them discloses that certain acts are punishable by the Crabbe and Miller Acts which are not covered by the ordinances, or either

of them, and that, on the other hand, the ordinances penalize certain acts which are not declared to be illegal under the state laws." *Id.*

The Court went on to determine that no conflict existed between the State law and the ordinances even though the ordinances made illegal and unlawful an action that was not made illegal under state law. As a result, the Supreme Court determined that even though an action would be permitted under the State statutes, it was well within the constitutional home rule authority of the municipality to ban such action and doing so would not be a real conflict. *Id.* at 268.

Therefore, the earliest Courts to take up the interpretation of the Home Rule Amendment understood that for a State statute to not infringe upon the constitutional rights of a municipality there must be several things. First, the State cannot pass generalized laws which broadly attempt to remove a municipality's ability to legislate in an area. The conflict must arise from the co-regulation of a particular subject matter area and not be a simple attempt by the State to curb municipal power. Second, there must be an actual conflict. That is, State law must expressly authorize that which municipal law prohibits.

3. In *Dayton*, the Ohio Supreme Court has recently revisited the manner in which it will examine Home Rule challenges, particularly with respect to whether a State law is a "general law."

In 2017, the City of Dayton successfully challenged three statutes obligating municipalities that operated red light cameras to: (1) have a law enforcement officer present at the location of a traffic camera; (2) prohibit a municipality from issuing a citation to a driver who was caught speeding by a traffic camera unless that driver exceeded the posted speed limit by at least 6 m.p.h. in certain areas and 10 m.p.h. in others; and (3) require a municipality to perform a safety study and information campaign prior to using a traffic camera. *Dayton v. State*, 151 Ohio

St.3d 168, 2017-Ohio-6909 (2017), ¶¶ 7-8. In *Dayton*, the Ohio Supreme Court struck down as unconstitutional these three limitations that the General Assembly attempted to place on municipalities in their use of traffic cameras. *Id.* at ¶¶ 16-35. Specifically, the Court held that all three failed the third prong of the *Canton* general-law test and thus, the statutes were not general laws. *Id.* at ¶¶ 16-27.

First, the Court determined that it is not sufficient to "merely examine S.B. 342 as a whole, but [it] must analyze the contested provisions individually." *Id.* at ¶ 20. As it related to the requirement that a police officer be present, the Court noted that the statute told municipalities how to "use their law enforcement resources when enforcing their traffic laws, thereby limiting municipalities' legislative power." *Id.* at ¶ 21. The Court noted that the statute at issue did not require that the officer actually witness the violation, only that an officer be present. Since that statute "infringes on municipalities' home rule authority without serving an overriding state interest . . . it is unconstitutional." *Id.* at ¶ 22.

Likewise, the Court found the statute's requirements that prohibited a municipality from issuing a traffic ticket unless the vehicle caught on the camera exceeded the posted speed limit by a certain amount to be unconstitutional. *Id.* at ¶ 23. "[T]he speeding-leeway provision . . . would operate as a de facto increase in speed limits in the limited areas covered by a traffic camera. Because R.C. 4511.0912 prohibits the exercise of home-rule powers without also serving an overriding state interest . . . it is unconstitutional." *Id.*

Finally, the Court struck down the statutory requirements that a municipality conduct a safety study and public information campaign before using a traffic camera, inform the public about the camera through the local newspaper, and observe a 30 day warning period before issuing a violation. *Id.* at ¶¶ 24-27. The Court again noted that the statute at issue did not

require traffic cameras to be placed in certain spots as a result of the safety study. *Id.* at ¶ 25. "Thus, the statute does not serve the purpose of directing that the devices be placed in spots where authorities have safety concerns." *Id.* The Court also noted that the newspaper publication and 30-day warning period served no purpose. "The public travelling through municipalities includes motorists who are not members of the local community targeted by the public-information campaign and local-publication requirement. Thus, the statute's requirements do not serve the purpose of ensuring that the public traveling in the area has notice." *Id.* at ¶ 27.

The Court stated that when a state statute's alleged purpose is not served by the requirements it creates, that statute does not serve an overriding state interest. *Id.* at ¶ 27. When that happens, the state statute is not a police, sanitary, or similar regulation. It is only a limit on the municipality's legislative power, not a general law, and the state statute is unconstitutional under the Home Rule Amendment. *Id.*

In our case, R.C. 9.68 and Am. Sub. H.B. 228 are not general laws under either the third or fourth prongs of the *Canton* general-law test. As such, the City is entitled to a preliminary injunction.

4. Am. Sub. H.B. 228 and R.C. 9.68 unconstitutionally infringe upon the City of Columbus' right to exercise its zoning powers to prohibit a firearms manufacturing plant from locating in a residential neighborhood.

The City of Columbus has enacted a comprehensive zoning code. That code specifies that it "is enacted to preserve and promote the public health, safety and welfare by means of regulations and restrictions enacted pursuant to a comprehensive plan designed to, among other purposes, encourage the orderly growth and development of the city; to provide for adequate light, air, open space and convenience of access; protect against fire and natural hazards; and

maintain and enhance the value of buildings, structures, and land throughout the city." C.C.C. 3301.01.

One of the broad districts that the City has zoned for is residential districts. Again, the Code itself provides that the purpose of the various residential districts is to "provide an opportunity for development of single, twin-single, three and four unit dwellings, manufactured housing, specific public uses, religious and educational, and accessory uses with specific denoted standards structured to ensure the health, safety and general welfare of the residents in these districts." C.C.C. 3332.01. The Columbus zoning code, much like most if not all other zoning codes, specifies the types of uses that are permitted. For example, in areas of the City zoned in the R-Rural district, the Code permits the following uses: one single-family dwelling; an agricultural use, farm, field crops, garden, greenhouse, nursery and truck garden; a religious facility; a school; a public park, playground, and recreation facility; a public library; a public fire and police station; a city approved soil conservation and watershed protection, and water filter bed, tower and well; a golf course (other than a commercial miniature course or a driving range); a non-profit recreation field and park with accessory shelter house; or an adult and child day care center as an accessory when located within a school or religious facility building. C.C.C. 3332.02. None of the residentially zoned districts would allow a firearms manufacturing plant. C.C.C. Chapter 3332.

Am. Sub. H.B. 228 and R.C. 9.68, however, purport to provide uniform laws for the manufacture of firearms. Amended R.C. 9.68(A) provides that "[e]xcept 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 . . . may . . . manufacture . . . any firearm, part of a firearm, its components, and its ammunition." The State has also declared that

municipalities can only have 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" or that "specifies the hours of operation or the geographic area where the commercial sale of firearms, firearm components, or ammunition for firearms may occur." R.C. 9.68(D) (original and amended versions). Thus, while the General Assembly has declared that municipalities may be allowed to zone for purposes of firearm sales, it has also prohibited municipalities from zoning to prohibit a firearm manufacturer to locate *anywhere* in the city.

As a result, there is clearly a conflict between the City's zoning ordinance which prohibits firearm manufacturing from occurring in, for example, a residential neighborhood and Am. Sub. H.B. 228 and R.C. 9.68, both in its original and amended forms, which purport to only allow municipal zoning regulations to touch upon firearm sales. Since the City's zoning code is an exercise of police power, this court must determine whether the State law is a general law. Based upon the Supreme Court's most recent precedent, it is clear that the answer to that question is that R.C. 9.68 is *not* a general law.

5. Am. Sub. H.B. 228 and R.C. 9.68 are not general laws under the *Canton* test because they only limit the legislative power of a municipality and they do not prescribe a rule of conduct upon citizens generally.

As noted above, from the time of the adoption of the Home Rule Amendment, the Supreme Court has determined that the General Assembly cannot pass a law that prohibits a municipality from regulating a topic. *Fremont*, 96 Ohio St. at 470. In passing Am. Sub. H.B. 228 and R.C. 9.68, the General Assembly ignored the clear command that it received in *Fremont* more than a century ago. Amended R.C. 9.68 operates to directly prohibit a municipality from attempting to pass any "ordinance, rule, regulation, resolution, practice or other action" concerning firearms. This language directly contradicts the holding in *Fremont* as the General

Assembly has now specifically stated that a municipality cannot pass an ordinance. Just as the Court stated over 100 years ago, "[i]t is sufficient to say that the general assembly of Ohio cannot deprive a municipality of its constitutional rights." *Fremont* at 470. The General Assembly has passed a law that does just that. By telling municipalities that they cannot pass ordinances, the General Assembly has violated the City's constitutional rights. Because Am. Sub. H.B. 228 and amended R.C. 9.68 violate the City's rights, the City has a substantial likelihood of success on the merits and is entitled to a preliminary injunction against that statutory provision.

Am. Sub. H.B. 228 and R.C. 9.68 also operate to prohibit a municipality from regulating firearms manufacturing through zoning. Even though the City of Columbus does not want a firearms manufacturer to locate in a residential district, the General Assembly has expressly prohibited the City from passing any zoning regulations related to firearms, including where a firearms manufacturer might locate. R.C. 9.68(A) and (D). Further, the City is not aware of any provisions of the Ohio Revised Code which establish zoning provisions for the manufacturing of firearms. Therefore, besides this blanket pronouncement by the State, there is no conflict between the City's zoning ordinances and State zoning laws.

As the Supreme Court noted, "when a statute expressly grants or limits the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, without serving an overriding statewide interest, then the statute, or a portion of it, violates the Home Rule Amendment." *Dayton* at ¶ 20. In our case, the State simply has no interest in attempting to require a municipality to allow a firearms manufacturer to operate in a residential neighborhood. In fact, the Plaintiff cannot come up with any conceivable justification to allow a firearms manufacturer to open a plant in the middle of a residential neighborhood. Further, there is no

actual conflict between the City's zoning ordinances and R.C. 9.68 as it applies to manufacturing because the State does not have any specific zoning ordinances beyond the generalized pronouncement of R.C. 9.68. Because R.C. 9.68 and Am. Sub. H.B. 228 do not advance any statewide interest, they are an unconstitutional limitation on the City's Home Rule Authority.

In addition to failing the third prong of the *Canton* test, R.C. 9.68 and Am. Sub. H.B. 228 also fail the fourth prong as well. That prong mandates that the statute at issue must prescribe a rule of conduct upon citizens generally to qualify as a general law. In her concurrence in *Dayton*, Justice French noted that the issue in *Canton* was a state statute "forbidding political subdivisions from prohibiting or restricting the location of permanently sited manufactured homes in any zone or district in which a single-family home was permitted—[and that statute] did not satisfy the requirement because it 'applie[d] to municipal legislative bodies, not to citizens generally.'" *Dayton* at ¶ 41 quoting *Canton* at ¶ 2, 36 (French, J., concurring). The traffic camera laws at issue in *Dayton* "were phrased in terms of what a local authority shall or shall not do. They apply not to citizens but to municipalities." *Id.* at ¶ 44. This was similar to the reasoning outlined by the *Linndale* Court which rejected the State law at issue there because it did not prescribe a rule of conduct on citizens generally. 85 Ohio St.3d at 55. And this is unlike cases such as *Mendenhall* in which the challenged statute directed its application to persons of the state generally. 117 Ohio St.3d 33, 2008-Ohio-270 at ¶ 25. Further, as in *Dayton*, the fact that other firearm regulations in other code sections describe substantive offenses does not mean amended R.C. 9.68 satisfies the fourth prong of *Canton*. *Dayton* at ¶ 44.

Am. Sub. H.B. 228 and R.C. 9.68 are unconstitutional because they only exist to limit the legislative power of municipalities. This is true of both the original and amended versions of

R.C. 9.68. What was implicit in the original construction of R.C. 9.68 is now explicit in R.C. 9.68 as amended by Am. Sub. H.B. 228.

6. The Ohio Supreme Court's prior ruling holding R.C. 9.68 to be a general law should be reconsidered in light of the amendments to R.C. 9.68 and the Court's ruling in *Dayton*.

No doubt, the State will attempt to argue that *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318 (2010), mandates that this Court find R.C. 9.68 constitutional under the Home Rule Amendment. This argument should be rejected. Both current and amended R.C. 9.68 violate the rights of the City of Columbus under the Home Rule Amendment and both statutes should be enjoined. In *Cleveland*, the Supreme Court stated that "today we reaffirm what we held in *Clyde*—that R.C. 9.68 is part of a comprehensive statewide legislative enactment—and we hold that the court of appeals erred in analyzing R.C. 9.68 in a vacuum." However, that is an incorrect analysis based on historical precedent, and one that has been overruled at least by implication. Further, this Court should consider the extent to which amended R.C. 9.68 now makes overt that it is simply attempting to limit the legislative authority of municipalities in contravention of Article XVIII, Section 3 of the Ohio Constitution.

In *Dayton*, the Court very clearly rejected the concept that when examining a home rule challenge to a state statute one should examine the legislative scheme as opposed to the challenged statute itself. 151 Ohio St.3d 168, 2017-Ohio-6909 at ¶¶ 21-27. As noted above, the plaintiffs in that case challenged three specific statutes, R.C. 4511.093(B)(1), 4511.0912, and 4511.095 and the Court did not analyze them together. It separated out its analysis of each one and determined three different times that those statutory provisions simply told municipalities how they needed to legislate. ("R.C. 4511.093(B)(1) tells municipalities how to use their law enforcement resources when enforcing their traffic laws, thereby limiting municipalities'

legislative power." *Id.* at ¶ 21; "R.C. 4511.0912 dictates how municipalities must enforce speed limits within their territories, thus limiting their legislative power." *Id.* at ¶ 23; "R.C. 4511.095 does not set forth state police, sanitary, or similar regulations but instead merely limits a municipalities legislative power to set forth those regulations." *Id.* at ¶ 27). Thus, contrary to the holding in *Cleveland*, in considering the third and fourth prongs of the *Canton* test the courts should not consider whether it is part of a comprehensive collection of state laws. *Cleveland*, 128 Ohio St.3d at 141.

In fact, the dissent pointed out in *Dayton* that the analysis used would mean that *Cleveland* was implicitly overruled. "If the provisions at issue today do not apply to citizens generally because they are directed at municipal governments, then the same must be said for the gun law in *Cleveland* and the predatory-lending provision in *Am. Servs. Assn.*" *Dayton* at ¶ 81 (DeWine, J., dissenting). The City agrees with the conclusion the dissent reached in *Dayton* as to the effect of that decision on the continued viability of the *Cleveland* analysis. When examining solely the statutory provision at issue, it is clear that Am. Sub. H.B. 228 and R.C. 9.68 are unconstitutional because they violate the City's Home Rule rights.

The jurisprudential approach to the general law test of *Canton* used in *Dayton* is also more consistent with the foundational principles of constitutional interpretation found in the Court's rulings in *Fremont*, *Youngstown*, *West Jefferson*, and *Linndale*. The decision in *Cleveland* represents an outlier in what had previously been consistent protection by the Court of municipal constitutional rights. The logical extension of the *Cleveland* ruling would be to make Article XVIII toothless in protecting what was put in place by the Ohio Constitutional Convention of 1912. As one delegate to that Convention noted, "If any act of the city can be

rendered null and void by a law of the state, where are we? Only where we are today." Proceedings and Debates of the Constitutional Convention of the State of Ohio – 1912, 1464.

Further, as noted above, one must look to the text of the particular statute to see what purpose it serves. *Dayton* at ¶¶ 21-27. Neither original R.C. 9.68 nor amended R.C. 9.68 serve any actual function outside of attempting to prohibit municipal legislation concerning firearms. Neither of those statutory provisions contains a code of conduct for citizens generally. They do not, for example, define what number of rounds of ammunition in a magazine is permissible. Both original and amended R.C. 9.68 simply exist for the purpose of telling municipalities that they have no authority to pass any ordinance concerning firearms. Based upon the *Dayton* decision, it is clear that both R.C. 9.68 and amended R.C. 9.68 violate the Plaintiff's constitutional right to home rule and they should be enjoined.

Lastly, there is yet another problem with both original and amended R.C. 9.68. They exist merely to act as a bounty for anyone who wishes to challenge municipal ordinances on firearms. While original R.C. 9.68 provided for fees and costs to a plaintiff who successfully challenges a municipal ordinance concerning firearms, Am. Sub. H.B. 228 and amended R.C. 9.68 go even further. The amended version now also entitles a successful plaintiff to attorney's fees, court costs, expert witness fees, and compensation for loss of income. R.C. 9.68(C)(3). And a plaintiff would be entitled to these "reasonable expenses" even if a municipality repeals an ordinance before a final judgment. R.C. 9.68(B)(2). The only reason for such a punitive measure to appear in a statute is simply to force a political subdivision to abandon its constitutional rights. This is especially true because a Plaintiff could always challenge a municipal ordinance claiming a violation of the Second Amendment in federal court where the Plaintiff would be entitled to fees and costs if the Plaintiff were to ultimately prevail.

In the First Amendment context, the Ohio Supreme Court has noted that "[a]lthough prior restrains are not unconstitutional per se, there is a heavy presumption against their constitutional validity." *State ex rel. Toledo Blade Co. v. Henry Cty. Court of Common Pleas*, 125 Ohio St.3d 149, 2010-Ohio-1533, ¶ 21. Now, for Columbus to exercise its constitutional rights in the area of home rule as it relates to firearms, it must risk not only paying attorneys fees and costs to anyone who challenges its ordinances, but it also faces potentially paying economic damages to any challenger. Because of these threats, the City of Columbus cannot, for example, pass an ordinance that bans high-capacity magazines, even though Ohio law does not have a statute regulating ammunition clips. Thus, it is not possible for the City to show actual conflicts with State law because State law acts in such way as to punish a municipality for even attempting to exercise its constitutional rights. By engaging in prior restraint of municipal legislation, the General Assembly—in both current and amended R.C. 9.68—has violated the City's Home Rule Authority.

C. The City Has a Strong Likelihood of Success on the Merits of its Claims that Am. Sub. H.B. 228 and R.C. 9.68 Violate the Separation of Powers Doctrine and Article II, Section 32 of the Ohio Constitution.

1. The doctrine of Separation of Powers is a fundamental principle of the Ohio and Unites States Constitutions.

"The first, and defining, principle of a free constitutional government is the separation of powers." *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, ¶ 39 citing *Evans v. State*, 872 A.2d 539, 543 (Del. 2005). As the United States Supreme Court long ago declared, "the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and . . . the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined." *Kilbourn v. Thompson*, 103 U.S. 168, 190 (1880). It is essential that those wielding the power in any one of these branches not

"encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other." *Id.* at 191. R.C. 9.68, as amended by Am. Sub. H.B. 228, violates this foundational principle of constitutional government

The Ohio Constitution does not explicitly endorse the concept of a separation of powers. "While Ohio, unlike other jurisdictions, does not have a constitutional provision specifying the concept of separation of powers, this doctrine is implicitly embedded in the framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government." *S. Euclid v. Jemison*, 28 Ohio St.3d 157, 158-59, 503 N.E.2d 136 (1986); *see also* Ohio Constitution, Article II, Section 32 ("The general assembly shall grant no divorce, nor exercise any judicial power not herein expressly conferred."). The separation of powers "represents the constitutional diffusion of power within our tripartite government. The doctrine was a deliberate design to secure liberty by simultaneously fostering autonomy and comity, as well as interdependence and independence, among the three branches." *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, ¶ 114.

It should be self-evident that the "administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers." *State ex rel. Johnson v. Taulbee*, 66 Ohio St.2d 417, 423 N.E.2d 80, paragraph one of the syllabus (1981). Thus, the Ohio Supreme Court recognized that the judiciary has both the power and the solemn duty to determine the constitutionality and the validity of the actions of both the legislative and executive branches of the Ohio government. *Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424 at ¶ 46 citing *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 462, 715 N.E.2d 1062 (1999). The Ohio Supreme

Court has acknowledged the overarching danger to a democratic system of government whenever one branch of government overtakes the responsibilities of any other. "[W]e protect the borders separating the three branches in order to ensure the security and harmony of the government and to voice the evils that would flow from legislative encroachment on our independence." *Id.* at ¶ 47 (internal citations omitted). As a result, Ohio's courts must "'jealously guard the judicial power against encroachment from the other two branches of government and . . . conscientiously perform our constitutional duties and continue our most precious legacy." *Id.* at ¶ 46 quoting *Sheward* at 467.

On the federal level, the United States Supreme Court has likewise recognized the importance of maintaining a separation of powers between the three branches of government. As the Court has maintained since 1803, "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). That Court has "not hesitated to strike down provisions of law that either accrete to a single Branch powers more appropriately diffused among separate Branches or that undermine the authority and independence of one or another coordinate Branch." *Mistretta v. United States*, 488 U.S. 361, 382, (1989).

2. Ohio courts have repeatedly rebuffed attempts by the General Assembly to mandate or pre-determine judicial outcomes in an attempt to limit judicial power.

Since the adoption of the 1851 constitution, the Ohio Supreme Court has held that "all the judicial power of the State is vested in the courts designated in the constitution." *Ex parte Logan Branch*, 1 Ohio St. 432, 434 (1853). Thus, when the General Assembly has passed a law interfering with the rights of the courts of this state to exercise their judicial powers, the courts have not hesitated to find such actions unconstitutional.

In *Bodyke*, the Supreme Court struck down portions of the Adam Walsh Act because it violated the separation of powers doctrine. *Bodyke* at ¶ 55. The statutes at issue in the case mandated that the Attorney General determine the appropriate classification status of offenders who had been previously classified by judges under a prior version of the statute. *Id.* at ¶¶ 55-56. The Court found a violation of the separation of powers doctrine because it assigned to the "executive branch the authority to revisit a judicial determination." *Id.* at ¶ 59. In fact, the Supreme Court found two distinct separation of powers deficiencies with the Adam Walsh Act. The first was that it unconstitutionally gave the executive branch of government the authority to review past decisions of the judicial branch. *Id.* at ¶ 60. The second was that the statute violated the separation of powers doctrine because it opened final judgments. *Id.* at ¶ 61.

Similarly, in *State v. White*, 2nd Dist. Miami No. 98-CA-37, 1999 Ohio App. LEXIS 5193 (Nov. 5, 1999), a court of appeals found that portions of a sexual predator statute mandating that courts consider certain evidentiary factors in making a finding of fact violated the separation of powers doctrine and Article, II Section 32 of the Ohio Constitution. As that court recounted, "'the administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers.'" *Id.* at *27 quoting *State ex rel. Johnson*, 66 Ohio St.2d 417 at paragraph one of the syllabus.

The *White* court found that "the General Assembly may properly require the courts to consider certain matters when granting *relief* made available to litigants by the laws the General Assembly enacts. That can only occur, however, after the *claim* on which the relief is predicated has been determined by a judicial tribunal." *Id.* at *30 (emphasis in original). The problem with the statute at issue in *White* was that its object "is not to prescribe what relief a court may grant, but to produce a judicial finding of fact that conforms to legislative policy." *Id.* at 31. Thus, "it

is beyond the constitutional power of the General Assembly to prescribe particular factors that a trial judge must consider when finding a fact." *Id.* at 32.

Finally, the Ohio Supreme Court, in *State v. Thompson*, 92 Ohio St.3d 584, 752 N.E.2d 276 (2001), found no constitutional deficiency in a statute that directed a trial court to consider all relevant factors including but not limited to a statutorily prescribed list. As the Supreme Court noted, "the factors listed in R.C. 2950.09(B)(2) are guidelines that serve an important function by providing a framework to assist judges in determining whether a defendant, who committed a sexually oriented offense, is a sexual predator. These guidelines provide consistency in the reasoning process." *Id.* at 587.

The Court went further and explained that the statutory guidelines "do not control a judge's discretion." *Id.* Instead, they merely provide a non-exhaustive list of factors that a judge can consider without prescribing any particular weight to give to any factor. Because the trial judge ultimately retained the ability to consider what weight, if any, to provide to each guideline and because the judge was not prohibited from considering any other factors, the Court determined these provisions were constitutional.

3. Amended R.C. 9.68 violates the Separation of Powers doctrine and as such the City is likely to succeed on the merits of its claim.

In our case, the General Assembly has specifically usurped the constitutional role of the courts in amended R.C. 9.68. The General Assembly has granted itself the authority to declare ordinances, rules, regulations, practice, or other actions of a municipal corporation to be null and void. Amended R.C. 9.68(A). The power to declare duly enacted legislation null and void is the domain of the judicial branch of government. *Bodyke* at ¶ 46. The General Assembly however has taken it upon itself to exercise that power. This action is no different than the General

Assembly telling the Attorney General to examine judicial determinations or demanding that judges consider an exclusive list of factors before making a determination.

In enacting amended R.C. 9.68, the General Assembly went beyond what they did in *White* or *Bodyke*; they have specifically compelled a judge to reach a certain result if a municipal "ordinance, rule, regulation, resolution, practice, or other action" "interferes" or "unduly inhibits" people and firearms. Thus, the General Assembly has told every trial judge in the State of Ohio how she **must** rule on a case based on prescribed factors. The action here is no different than if the General Assembly passed a statute mandating that courts find that any individual who filed a products liability lawsuit must have a verdict returned in his or her favor. The General Assembly, not a judge after examining both the law and the facts, has empowered itself by amended R.C. 9.68 to determine the outcome of cases and to declare actions taken by a municipal government void. Thus, it is substantially likely that the Plaintiff will prevail on its claims that Am. Sub. H.B. 228 and R.C. 9.68 violate the separation of powers doctrine and Article II, Section 32 of the Ohio Constitution.

D. The City Has a Substantial Likelihood of Success on the Merits Because Am. Sub. H.B. 228 and Amended R.C. 9.68 are Void for Vagueness.

Ohio courts have recognized that a "law must give fair notice to the citizenry of the conduct proscribed and the penalty to be affixed if that law is breached." *Norwood*, 110 Ohio St.3d 353, 2006-Ohio-3799 at ¶ 81. Although most understand the void for vagueness doctrine to apply to criminal laws, "'[v]ague laws in any area suffer a constitutional infirmity.'" *Id.* at ¶ 82 quoting *Ashton v. Kentucky*, 384 U.S. 195, 200 (1966).

When examining a law challenged on vagueness grounds, "the court must determine whether the enactment (1) provides sufficient notice of its proscriptions to facilitate compliance by persons of ordinary intelligence and (2) is specific enough to prevent official arbitrariness or

discrimination in its enforcement." *Id.* at ¶ 84 citing *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Thus, a "determination of whether a statute is impermissibly imprecise, indefinite, or incomprehensible must be made in light of the facts presented in the given case and the nature of the enactment challenged." *Id.* citing *Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982) (internal citations omitted).

Although regulations directed at economic matters imposing only civil penalties are subject to a less strict vagueness test, "if the enactment 'threatens to inhibit the exercise of constitutionally protected rights, 'a more stringent vagueness test is to be applied.'" *Id.* at ¶ 85 citing *Hoffman Estates* at 498-499. The test in any void for vagueness challenge is "whether the law affords a reasonable individual of ordinary intelligence fair notice and sufficient definition and guidance to enable him to conform his conduct to the law; those laws that do not are void for vagueness." *Id.* at ¶ 86 citing *Grayned v. Rockford*, 408 U.S. 104, 108-09 (1972).

In *Norwood*, the Ohio Supreme Court determined that a City of Norwood ordinance allowing the city to take property through eminent domain if the property was in a "deteriorating area" was void for vagueness. The Court noted that "we cannot say that the appellants had fair notice of what conditions constitute a deteriorating area, even in light of the evidence adduced against them at trial." *Id.* at ¶ 97. The Court proclaimed that "deteriorating area" was a "standardless standard." *Id.* at ¶ 98. Thus, the ordinance simply recited subjective factors "that invite ad hoc and selective enforcement—a danger made more real by the malleable nature of the public-benefit requirement." *Id.*

In our case, Am. Sub. H.B. 228 and R.C. 9.68 are void for vagueness. The amended statute claims to prohibit any municipal "ordinance, rule, regulation, resolution, practice, or other action or any threat of citation, prosecution, or other legal process" as it relates to firearms. R.C.

9.68(A). Yet, it does not define what any of that means. Could a municipality be sued under R.C. 9.68 and subject to fees and damages for passing a resolution urging the General Assembly to repeal R.C. 9.68 so that the municipality felt comfortable passing common sense gun regulation? Could a municipality be sued under R.C. 9.68 for debating whether certain firearms have caused an increase in crime? Could the City of Columbus be sued under R.C. 9.68(B) and subject to fees and damages for simply bringing this action challenging the constitutionality of R.C. 9.68 and Am. Sub. H.B. 228? Could a municipality be sued under R.C. 9.68 if one of its officials addressed a rally or testified before the Ohio General Assembly or U.S. Congress about the need for firearm regulations? The statute is so devoid of any standards that it appears that the answer to any of these questions might be yes. But a reasonable official could not know that.

As noted above, the right to Home Rule is a protected constitutional right enjoyed by the City of Columbus. The Supreme Court has recognized that when constitutional rights are at issue a heightened level of scrutiny is required. The City is unaware of any void for vagueness challenge brought by municipalities claiming the fundamental right of home rule. However, based upon prior Ohio Supreme Court precedent, it would be appropriate for this Court to use a heightened level of scrutiny when examining R.C. 9.68 as amended by Am. Sub. H.B. 228. However, even if this Court were to use a lower level of scrutiny, the result should be the same. This Court should enjoin amended R.C. 9.68 and Am. Sub. H.B. 228 as they are void for vagueness.

E. The City Will Suffer Irreparable Harm if this Court Does Not Issue an Injunction.

Ohio courts have long recognized that "[i]rreparable harm exists where there is no plain, adequate, and complete remedy at law, and for which money damages would be impossible, difficult, or incomplete." *Ohio Pyro, Inc. v Ohio Dept. of Commerce,* 12th Dist. Fayette Nos.

CA2005-03-009 and CA2005-03-011, 2006-Ohio-1002, ¶ 24 citing *Crestmont Cadilac Corp. v Gen. Motors Corp.*, 8th Dist. Cuyahoga No. 83000, 2004-Ohio-488, ¶ 36. Actual harm is not required, as "a threat of harm is a sufficient basis on which to grant injunctive relief." *Convergys Corp. v Tackman*, 169 Ohio App.3d 665, 2006-Ohio-6616, ¶ 9 (1st Dist.).

As the Tenth District has noted, "'[i]njunctive relief is warranted when a statute is unconstitutional, enforcement will infringe upon constitutional rights and cause irreparable harm, and there is no adequate remedy at law.'" *Magda v. Ohio Elections Comm'n*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶ 38 quoting *United Auto Workers Local Union 1112 v. Philomena*, 121 Ohio App.3d 760, 781, 700 N.E.2d 936 (10th Dist. 1998). In fact, a "finding that a constitutional right has been threated or impaired mandates a finding of irreparable injury as well." *Id.* citing *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001).

In our case, the Plaintiff has a constitutional right to its home rule authority. The State has sought to interfere with that constitutional right by statutorily prohibiting the City from exercising its rights. Because the City will suffer a loss of its constitutional right it has suffered irreparable harm and is entitled to a preliminary injunction.

F. Third Parties Will not be Unjustifiably Harmed if this Court Were to Issue an Injunction.

There is no harm that any third party would suffer were this Court to issue an injunction against R.C. 9.68 and Am. Sub. H.B. 228. By insuring a proper constitutional balance between the State and its constitutionally protected municipalities, the Court is ensuring that third parties would not be harmed since an injunction would restore the constitutional order.

It appears that the only argument that the State could advance is a claim that individuals might unwittingly violate a yet to be passed municipal ordinance as it relates to firearms. This argument, however, is both speculative and irrelevant. First, this assumes the City would

exercise its constitutionally protected right to pass common sense firearm regulations during the pendency of this litigation. Second, even if the City were to pass a hypothetical ordinance that might in some way impact a hypothetical third party who violated said ordinance, the harm would not be unjustifiable. The ordinance would have been a duly passed and authorized ordinance of the City and the third party would still enjoy the constitutional protections of both the Ohio and United States Constitutions. If a municipality were to overstep its constitutional boundaries, any individual harmed by such behavior would be free to challenge the city's actions in either state or federal court. Therefore, there will be no harm to third parties and this factor weighs in favor of granting the preliminary injunction.

G. The Public Interest is Served by Issuing an Injunction.

There are several reasons why an injunction against R.C. 9.68 and Am. Sub. H.B. 228 serves the public interest. First, as noted above, State law prohibits a City from excluding a firearms manufacturer from setting up a plant in the middle of a residential neighborhood. Courts have recognized that "the enforcement of zoning regulations and the grant of injunctive relief necessarily involve the advancement and protection of [the] public interest." *Lakemore v. Shilling*, Summit C.P. No. CV-2017-05-2165, 2017 Ohio Misc. LEXIS 8201 (July 19, 2017). Second, an injunction securing constitutionally protected rights serves the public interest. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

For these reasons, this Court should grant a preliminary injunction against R.C. 9.68 and Am. Sub. H.B. 228.

IV. CONCLUSION

Thus, Plaintiff City of Columbus asks this Court to grant a preliminary injunction against R.C. 9.68, both in its original and amended forms, and Am. Sub. H.B. 228.

Respectfully,

CITY OF COLUMBUS, DEPARTMENT OF LAW
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CERTIFICATE OF SERVICE

This is to certify that the foregoing Plaintiff's Motion for a Preliminary Injunction has been served by operation of this Court's electronic filing system on this 19th day of March 2019.

/s/ Richard N. Coglianese
Richard N. Coglianese