

IN THE COURT OF COMMON PLEAS
FAIRFIELD COUNTY, OHIO

State of Ohio,
c/o Ohio Attorney General Dave Yost
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

Plaintiff,

v.

City of Columbus,
90 W. Broad St., 2nd Floor
Columbus, Ohio 43215

And

Zach Klein, Columbus City Attorney,
77 N. Front Street
Columbus, Ohio 43215

Defendants.

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Case No.
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COMPLAINT FOR DECLARATORY JUDGMENT, TRO, AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

Plaintiff State of Ohio for its Complaint alleges as follows:

INTRODUCTION

1. Article I, Section IV of the Ohio Constitution gives every Ohioan a fundamental right to "bear arms for their defense and security."
2. Ohio Revised Code Section 9.68, which prevents municipalities from regulating firearms, has twice withstood municipal home rule challenges.

3. Despite this, and with great political theater, on December 5, 2022, the Columbus City Council passed several ordinances (“Columbus Firearm Ordinances”) that restrict, impede, and/or ban the ownership, possession, purchase, other acquisition, transport, and storage of firearms, their components, and their ammunition. *See Exhibit A, Columbus Firearm Ordinances effective December 15, 2022.*

4. Absent court intervention, the Columbus Firearm Ordinances will become effective on December 15, 2022, and will instantly criminalize hundreds, if not thousands, of Columbus residents (including Columbus residents that also reside in Fairfield County).

5. One of the newly passed ordinances, Columbus City Code 2323.32, imposes a complete ban on the possession of “large capacity magazines.”

6. Columbus City Code 2323.32(A) states, “No person shall knowingly possess, purchase, keep for sale, offer or expose for sale, transfer, distribute, or import a large capacity magazine.”

7. Columbus City Code 2323.32(C) states, “Whoever violates this section is guilty of unlawful carry or possession of a large capacity magazine, a misdemeanor punishable by up to one year in jail with a mandatory minimum jail term of at least one hundred eighty (180) consecutive days during which mandatory jail term the defendant shall not be eligible for work release and up to a \$1500 fine.”

8. The Columbus City Council defined “large capacity magazine” as “any magazine, belt, drum, feed strip, clip or other similar device that has the capacity of, or can be readily restored or converted to accept, thirty (30) or more rounds of ammunition for use in a firearm. A “large capacity magazine” does not include any of the following: (1) A feeding device that has been permanently altered so that it cannot accommodate more than thirty rounds of ammunition; (2) A

.22 caliber tube ammunition feeding device: (3) A tubular magazine that is contained in a lever-action firearm; (4) A magazine that is permanently inoperable.” Columbus City Code 2323.11(N).

9. Recognizing that it is prohibited from enacting and enforcing 2323.32, the City of Columbus simultaneously enacted 2323.321, which provides, “If a court of competent jurisdiction reinstates Ohio Revised Code Section 9.68 which governs the regulation of firearms by a political subdivision or if the definition of “large capacity magazine” in Section 2323.11 of the Columbus City Codes is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid,” then the definition of large capacity magazine will be increased to “one hundred (100) or more rounds of ammunition for use in a firearm other than a handgun.”

10. The only exceptions to this complete ban of large capacity magazines are for law enforcement, qualifying governmental employees, licensed importers, manufacturers, and dealers, and qualifying businesses. Columbus City Code 2323.32(B)(1)-(4).

11. Under R.C. 9.68, and the Supreme Court precedent enforcing it, the City is prohibited from enacting magazine capacity limits, no matter what number the City chooses.

12. Another newly passed ordinance, Columbus City Code 2323.191, makes it a criminal offense if an individual simply stores a firearm, “in a manner or location in the person’s residence where the person knows or reasonably should know a minor is able to gain access to the firearm.”

13. This provision prohibits a person from, for example, entrusting their teenager with ownership, control, and access to a hunting rifle, or sporting shotgun, even if the teen does not have access to the ammunition.

14. The mere act of storing a firearm in such a manner is a misdemeanor of the fourth degree. Columbus City Code 2323.191(B)(1).

15. In addition to criminal penalties for merely failing to store a firearm in compliance with the Columbus City Code, an individual will face seizure and forfeiture of the firearm. Columbus City Code 2323.191(E)

16. The Columbus City Council deemed the “Columbus Firearm Ordinances” to be an “emergency measure” which “shall take effect and be in force from and after its passage and approval by the Mayor, or ten days after passage if the Mayor neither approves nor vetoes the same. Exh. A at 6-7.

17. If Columbus City Mayor Andrew Ginther neither approves nor vetoes these ordinances, they will become effective on Thursday, December 15, 2022. *Id.*; *see also* Columbus City Charter Sections 24-25.

18. Thus, on December 15, 2022, any resident of the City of Columbus or individual passing through the City of Columbus who *merely possesses* a large capacity magazine will immediately be committing a criminal misdemeanor automatically punishable by a minimum of 180 days in jail, and potentially subject to up to one year in jail.

19. Also, on December 15, 2022, any individual who merely stores his or her firearm in a manner not in compliance with Columbus City Code 2323.191(A)(1) will immediately be committing a misdemeanor of the fourth degree and is subject to forfeiture of his or her firearm.

20. The Columbus Firearm Ordinances, and particularly Columbus City Code Sections 2323.191, 2323.32, 2323.11(N) and 2323.321 clearly violate the Ohio Constitution, and violate Ohio Revised Code Section 9.68, which has twice withstood home rule challenges in the Ohio Supreme Court.¹

¹ There is no question that public opinion greatly varies on what would be common sense in the handling, storage and possession of firearms. For example, it is common sense to the Ohio Attorney General Dave Yost to store his firearms behind a biometric gun safe, which requires

21. An immediate temporary restraining order, preliminary and permanent injunctions are necessary to prevent the City from unconstitutionally turning thousands of law abiding citizens into instantaneous criminals merely because they exercise their constitutional right to bear arms.

JURISDICTION AND VENUE

22. This Court has jurisdiction to issue a declaratory judgment under R.C. 2721.01-2721.15 and to grant a temporary restraining order, preliminary injunction and permanent injunction under R.C. 2721.03.

23. This Court also has jurisdiction to grant damages, declaratory relief, injunctive relief, or a combination of those remedies in addition to reasonable expenses under R.C. 9.68(B).

24. A portion of the City of Columbus falls within Fairfield County. Approximately 11,000 residents of the City of Columbus also reside in Fairfield County. This makes up nearly 7% of the County's population.

25. Even non-Columbus residents who pass through the City of Columbus are subject to prosecution under these unconstitutional and unlawful ordinances.

26. Jurisdiction and venue are proper also to vindicate and protect the Ohio Constitution and R.C. 9.68 from the City of Columbus' unconstitutional and unlawful ordinances, which become effective on December 15, 2022.

PARTIES

27. Plaintiff State of Ohio brings this action to protect and vindicate the fundamental right of its citizens to bear arms enshrined in Article I, Section IV of the Ohio Constitution and

fingerprint verification to access. This lawsuit is not about what one or a few individuals believe is common sense when it comes to firearms regulations. This lawsuit is about protecting and vindicating Ohioans' fundamental constitutional right to bear arms and Ohio law, which requires statewide uniformity in firearm regulations.

Ohio law, specifically R.C. 9.68, against the unconstitutional and unlawful Columbus Firearm Ordinances as described herein. Those ordinances create criminals out of law-abiding citizens who are exercising their fundamental right to bear arms for the defense and security of themselves and their loved ones.

28. The State of Ohio, as sovereign, has standing to enforce the rights of its citizens, and to protect those rights from infringement by a political subdivision of this State. The State also has standing to ensure that political subdivisions of this State do not legislate in contravention of the authority delegated to them.

29. Defendant Zach Klein is the Columbus City Attorney. He is the legal adviser of, and attorney and counsel for the city, and is responsible for defending all complaints in which the city is a party. *See* Columbus City Charter Sections 67, 69.

30. Defendant City of Columbus is a political subdivision that encompasses portions of Fairfield County, Ohio.

FACTUAL AND LEGAL ALLEGATIONS

31. Article I, Section IV of the Ohio Constitution gives every Ohioan a fundamental right to “bear arms for their defense and security.”

32. The right to bear arms is part of Ohio’s heritage, which appeared in Ohio’s first Constitution of 1802. This right was later ratified in the Ohio Constitution of 1851.

33. The right to bear arms continues to be one of our most fundamental rights enshrined in the Ohio Constitution today.

34. In 2007, the Ohio General Assembly passed a law that codified the Ohio Constitution’s fundamental right to bear arms and provided for the uniform regulation of firearms throughout Ohio. *See* R.C. 9.68. The Supreme Court of Ohio has twice held that R.C. 9.68 is a

general law that preempts conflicting local ordinances and does not unconstitutionally infringe on municipal home-rule authority. See *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605; *City of Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318. In 2019, the Ohio General Assembly amended R.C. 9.68.

35. R.C. 9.68(A) states, “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, other transfer, manufacture, taxation, keeping, and reporting of loss or theft of firearms, their components, and their ammunition, and knives.”

36. The General Assembly also found and declared 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.” R.C. 9.68(A).

37. In order to protect every Ohioan’s right to bear arms and to ensure that law-abiding citizens can protect themselves, their families and others, the General Assembly mandates uniformity in the regulation of firearms, their components, and their ammunition, and knives. R.C. 9.68(A).

38. R.C. 9.68(A) provides that, “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, acquire, transport, store, carry, sell, transfer, manufacture, or keep any firearm, part of a firearm, its components, and its ammunition, and any knife.”

39. Thus, to foster and protect the uniformity of laws, the General Assembly also mandated that “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 arms, 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.” R.C. 9.68(A).

40. In 2019, the City of Columbus brought a civil action in the Franklin County Common Pleas Court against the State of Ohio seeking declaratory and injunctive relief claiming that R.C. 9.68 violated the Home Rule Amendment to the Ohio Constitution. *City of Columbus v. State of Ohio*, Franklin County Common Pleas, Case No. 19-cv-2281.

41. On March 19, 2019, the City also moved for a preliminary injunction against R.C. 9.68. *Id.*

42. On October 24, 2022, after more than three years of no action by the presiding judge, the City filed a Writ of Procedendo in the Supreme Court of Ohio, requesting the Court to order the presiding judge to rule on its preliminary injunction order. *State ex rel. City of Columbus v. Judge Stephen L. McIntosh*, Supreme Court of Ohio, Case No. 2022-1306.

43. On November 2, 2022, the presiding judge issued a decision granting the City’s motion for preliminary injunction.

44. On November 4, 2022, the State of Ohio moved for an automatic stay of the preliminary injunction under Civ. R. 62. The State of Ohio also filed a Notice of Appeal, which is currently before the Tenth District Court of Appeals.

45. On November 9, 2022, the Court granted the State’s stay motion in full and stayed “all proceedings” pending appeal of the preliminary injunction. Thus, the preliminary injunction issued by the Franklin County Court of Common Pleas is currently stayed while the matter is on appeal. *See Exhibit B, Decision and Entry* granting the State’s stay motion in full.

46. As a technical matter, the State sought to *clarify* the Court’s stay order so that it specifically and clearly stayed both the injunction and the proceedings.

47. Following a status conference, the parties submitted additional briefing on the clarification issue as directed by the Court. To date, the Court has neither disturbed his original stay of the injunction nor clarified his order.

48. Thereafter, the Columbus City Council passed the Columbus Firearm Ordinances that are the subject of this action.

49. The Franklin County Common Pleas decision is not binding on this Court. *Ohioans for Concealed Carry v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605; *City of Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-631.

* * * *

50. The State of Ohio is entitled to a temporary restraining order and preliminary injunction.

51. The State of Ohio has a strong likelihood of success on the merits of its claims.

52. Absent the relief requested herein, there will be irreparable harm by way of a constitutional infringement of Ohioans’ right under Article 1, Section IV of the Ohio Constitution and the violation of R.C. 9.68.

53. There will be no injury to others caused by the granting of the relief requested. In fact, Ohioans will benefit from not instantly being legislated as criminals for exercising rights protected by the Ohio Constitution and the Revised Code.

54. For these same reasons, the public interest will be served by granting the relief requested and vindicating the constitutional rights of Ohio Citizens.

55. The State of Ohio is also entitled to a permanent injunction.

FIRST CAUSE OF ACTION – Violation of Article I, Section IV of the Ohio Constitution

56. Plaintiff restates and incorporates by reference all prior paragraphs and the paragraphs in the count below as though fully set forth in this paragraph.

57. Article 1, Section IV of the Ohio Constitution protects Ohioans’ right to bear arms. This includes firearms and their components such as large capacity magazines.

58. The Columbus City Council may not pass ordinances that abridge the fundamental right to bear arms including the carrying or possession of a large capacity magazine.

59. Columbus City Codes 2323.32, 2323.11(N) and 2323.321 criminalizes the “carry or possession of a large capacity magazine.”

60. Columbus City Code 2323.191 criminalizes the mere storage of a firearm that does not comply with the Columbus City Code.

61. Those ordinances infringe on the fundamental constitutional right to bear arms.

62. Thus, Columbus City Codes 2323.191, 2323.32, 2323.11(N) and 2323.321 violate Article I, Section IV of the Ohio Constitution.

SECOND CAUSE OF ACTION – Violation of R.C. 9.68

63. Plaintiff restates and incorporates by reference all prior paragraphs and the paragraphs in the count below as though fully set forth in this paragraph.

64. R.C. 9.68 requires uniform laws for the regulation of firearms throughout the State of Ohio.

65. R.C. 9.68 specifically prohibits firearm regulations “except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law.”

66. The Ohio Supreme Court has held that R.C. 9.68 does not violate the Home Rule Amendment to the Ohio Constitution.

Columbus City Codes 2323.191, 2323.32, 2323.11(N) and 2323.321 place restrictions on the possession, storage and carrying of firearms that go further than what is specifically provided for by the United States Constitution, Ohio Constitution, state law, or federal law.” See R.C. 9.68(A).

67. Thus, Columbus City Codes 2323.191, 2323.32, 2323.11(N) and 2323.321 violate R.C. 9.68(A) and therefore, they are null and void.

CONCLUSION

68. Because the clearly unconstitutional and unlawful Columbus City Code Sections 2323.191, 2323.32, 2323.11(N) and 2323.321 are set to take effect on December 15, 2022 resulting in the instantaneous criminalization of the exercise of a fundamental right, an immediate temporary restraining order and preliminary injunctive relief are necessary.

PRAYER FOR RELIEF

Accordingly, the State of Ohio respectfully requests that this Court:

- A. Declare that Columbus City Ordinances 2323.191, 2323.32, 2323.11(N) and 2323.321 violate Article 1, Section IV of the Ohio Constitution.
- B. Declare that Columbus City Ordinances 2323.191, 2323.32, 2323.11(N) and 2323.321 are null and void as provided for by R.C. 9.68.
- C. Issue a temporary restraining order, preliminary injunction and permanent injunction barring the challenged ordinances from becoming effective.
- D. Issue a temporary restraining order, preliminary injunction and permanent injunction against Defendants from enforcing the challenged ordinances.
- E. Award reasonable expenses to the State of Ohio pursuant to R.C. 9.68(B).
- F. Award all such other relief that this Court deems just and proper.

Respectfully submitted,

Dave Yost
Ohio Attorney General



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