

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

OHIOANS FOR CONCEALED CARRY, et al., :

Plaintiffs, :

vs. : Case No. 18CVH06-5216

CITY OF COLUMBUS, et al., :

Judge Cain

Defendants. :

ENTRY GRANTING A PERMANENT INJUNCTION AS TO COLUMBUS
CODIFIED ORDINANCE § 2323.171

FINAL JUDGMENT ENTRY

Rendered this ____ day of July 2018.

CAIN, J.

This matter is an action for declaratory judgment. Currently, the ownership of firearms is regulated by the State of Ohio via R.C. 9.68, which states:

(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 of firearms, their components, and their ammunition. 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, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.

(B) In addition to any other relief provided, the court shall award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section.

(C) As used in this section:

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(1) The possession, transporting, or carrying of firearms, their components, or their ammunition include, but are not limited to, the possession, transporting, or carrying, openly or concealed on a person's person or concealed ready at hand, of firearms, their components, or their ammunition.

(2) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

Furthermore, the State of Ohio has criminalized the possession of firearms in situations where a person has been convicted of a felony offense of violence.

(A) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

...

(2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence...

R.C. 2923.13(A)(2). Due to the clear wording of the above code section, a felony conviction for domestic violence would result in a person being prohibited from owning a firearm. Violation of R.C. 2923.13(A)(2) is a felony in the third degree. See R.C. 2923.13(B).

On May 16, 2018 Defendant¹, City of Columbus (hereinafter "Columbus"), enacted a series of ordinances concerning firearms that differ from Ohio law. First, Columbus has expanded the crime of having a weapon under disability. Columbus Codified Ordinance § 2323.13 states in pertinent part:

¹ Defendant, Columbus City Attorney, is the party charged with enforcement of Columbus ordinances. Therefore, when the Court is referring to Columbus, it is also referring to Columbus City Attorney.

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(A) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordinance, if any of the following apply:

...

(3) The person has been convicted of a misdemeanor offense of domestic violence...

(B) Whoever violates this section is guilty of a misdemeanor having weapons while under disability...

Second, Columbus has criminalized the possession of what it defines as "illegal rate-of-fire acceleration firearm accessories". Columbus Codified Ordinance §2323.171 states:

(A) No person shall knowingly acquire, have, carry, or use an illegal rate-of-fire acceleration firearm accessory.

(B) Whoever violates this section is guilty of unlawful possession of a firearm accessory, a misdemeanor...

(C) For purposes of this section:

(1) "illegal rate-of-fire acceleration firearm accessory" means any trigger crank, a bump-fire device, or any part, combination of parts, component, device, attachment or accessory, that is designed or functions to accelerate the rate of fire of a semi-automatic firearm but not convert the semi-automatic firearm into an automatic firearm. These include, but are not limited to, firearm accessories described or marketed as bump stocks, bump-fire stocks, slide fires and accelerators.

It is due to these two Columbus ordinances that the present case has been filed.

On June 21, 2018 Plaintiffs filed the instant lawsuit. In their Complaint, Plaintiffs ask the Court to declare that Columbus Codified Ordinances §2323.13(A)(3)² and §2323.171(hereinafter collectively referred to as the "Ordinances") conflict with Ohio law and are unlawful. While Plaintiffs' Complaint

² While Plaintiffs ask for an order declaring the entirety of §2323.13 unlawful, it is clear from the parties' arguments that §2323.13(A)(3) is the real section at issue.

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does not directly state that they are making a facial constitutional challenge to the Ordinances, it is clear by the wording of Plaintiffs' Complaint that this what they are doing. In arguing that the Ordinances are in conflict with Ohio law, Plaintiffs are arguing that Columbus has exceeded its Home Rule authority as provided by Section 3, Article XVIII of the Ohio Constitution.

Along with their Complaint, Plaintiffs asked the Court to issue a temporary restraining order preventing the enforcement of the Ordinances pending the resolution of this case. After meeting with counsel for the parties, the Court granted Plaintiffs a temporary restraining order on June 22, 2018. This matter was then set for a Preliminary Injunction hearing on July 9, 2018. At this hearing, the parties each put on a witness in support of their respective positions. Furthermore, the parties made brief oral arguments. Briefs have also been submitted by the parties, including an *Amicus Curiae* brief from the State of Ohio. Based upon the arguments, briefs and evidence presented at the hearing, the Court is now ready to render its decision in this matter.

Before addressing the parties' arguments, the Court must make two procedural determinations. First, the Court must determine whether the present decision is a final decision in this matter or is just a preliminary injunction pending further proceedings. There are no factual issues in this matter. The question before the Court is purely a legal one. If the Court finds that the Ordinances are not in conflict with Ohio law, they are enforceable and this case is over. If the Court finds that the Ordinances are in conflict with Ohio law, they are unenforceable and this case is over. Either way, there will be nothing left for the Court to decide and this

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case is over. As such, the Court is making the present decision a final judgment in this matter.

The second procedural issue that the Court must deal with concerns standing. Columbus argues that Plaintiffs do not have proper standing to bring the present lawsuit. Since this is so, the Court must determine whether Plaintiffs do or do not.

Plaintiffs have standing to bring the present lawsuit. A taxpayer is authorized to bring a lawsuit against a municipality via R.C. 733.59, which states:

If the village solicitor or city director of law fails, upon the written request of any taxpayer of the municipal corporation, to make any application provided for in sections 733.56 to 733.58 of the Revised Code, the taxpayer may institute suit in his own name, on behalf of the municipal corporation. Any taxpayer of any municipal corporation in which there is no village solicitor or city director of law may bring such suit on behalf of the municipal corporation. No such suit or proceeding shall be entertained by any court until the taxpayer gives security for the cost of the proceeding.

R.C. 733.56 states:

The village solicitor or city director of law shall apply, in the name of the municipal corporation, to a court of competent jurisdiction for an order of injunction to restrain the misapplication of funds of the municipal corporation, the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the municipal corporation in contravention of the laws or ordinance[s] governing it, or which was procured by fraud or corruption.

The above statutes, when read together, create two requirements that a person must meet in order to have taxpayer standing. These requirements are: (1) that a city attorney was notified and declined action; and (2), that the challenged action of the municipality falls under one of the categories stated in R.C. 733.56.

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As it relates to Plaintiff, Gary Witt³, he meets the first requirement of taxpayer standing. On May 31 and June 12, 2018, Mr. Witt sent two letters to the Columbus City Attorney asking him to take action against the implementation of the Ordinances. See Plaintiffs' Verified Complaint at ¶¶11, 13. The Columbus City attorney declined to take such action. Id. at ¶14. Therefore, Plaintiffs have shown that Mr. Witt meets the first requirement of taxpayer standing.

As to the second requirement of taxpayer standing, the enactment of an unconstitutional city ordinance can be considered to be an abuse of a municipality's corporate powers. Since this is so, Mr. Witt meets the second requirement of taxpayer standing. Mr. Witt has met all the requirements necessary to have taxpayer standing under R.C. 733.59 and R.C. 733.56. As such, this matter can move forward.

As to the other two plaintiffs in this matter, there is not much to say. The Ordinances directly impact the rights of their members. Since this is so, it is clear to the Court that both Ohioans for Concealed Carry and Buckeye Firearms Foundation have organizational standing in this matter. Once again, this matter can proceed forward.

With the issue of standing out of the way, the Court will begin by stating what this case is not about. This case is not about whether there is excessive gun violence in society. There obviously is. This case is not about whether it is morally right to ban such things as bump stocks. The Court is not here to make moral judgments. This case is not about whether stricter weapons under disability laws

³ Mr. Witt is a resident and taxpayer of Columbus. See Plaintiffs' Verified Complaint at ¶5.

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will prevent gun violence. That issue is up for debate. This matter is purely a legal matter. It is solely about whether Columbus has the authority to enact the Ordinances. That is all there is.

The first ordinance that the Court will deal with is Columbus Codified Ordinance §2323.171, *i.e.* Columbus' ban of certain "accessories". For the purposes of this discussion, the Court will refer to this as the "Bump-Stock Ban"⁴. Plaintiffs argue that the Bump-Stock Ban is in direct conflict with R.C. 9.68 and as such, Columbus exceeded its Home Rule authority by enacting it. In response, Columbus simply argues that there is no conflict between the Bump-Stock Ban and Ohio law.

The issue of conflicts between Ohio statutes and municipal ordinances is one that is very familiar to the Court. The Home Rule Amendment to the Ohio Constitution has generated a great deal of litigation in Ohio, especially litigation of the nature currently before the Court. In Marich v. Bob Bennett Construction Co. (2008), 2008 Ohio 92, the Ohio Supreme Court provided a good discussion of the Home Rule Amendment's treatment of a local regulation that is perceived to be in conflict with a state regulation. In its opinion, the Supreme Court held:

Section 3, Article XVIII of the Ohio Constitution, commonly known as the "Home Rule Amendment," gives municipalities 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."...

...

We use a three-part test to evaluate conflicts under the Home Rule Amendment. "A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local

⁴ This is due to the fact that this is what the parties often refer to it as.

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self-government, and (3) the statute is a general law." *Canton v. State*, 95 Ohio St.3d 149, 2002 Ohio 2005, 766 N.E.2d 963, P 9. We will address these elements out of order as follows.

Id. at ¶¶7, 9. The Court will refer to this three-part analysis as the "Home Rule Test". In the present matter, there is no real dispute as to parts two and three of the Home Rule Test. It is clear that the Bump-Stock Ban was enacted pursuant to Columbus' police power and that R.C. 9.68 is a general law. What is in dispute is whether the Bump-Stock Ban actually conflicts with R.C. 9.68.

In the case of Village of Sheffield v. Rowland (1999), 87 Ohio St. 3d 9, the Ohio Supreme Court laid out a simple test to determine when an Ohio statute and a municipal ordinance are in conflict. In its opinion, the Supreme Court held:

The test to determine when a conflict exists between a municipal ordinance and a general law of the state is "whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." *Struthers v. Sokol* (1923), 108 Ohio St. 263, 140 N.E. 519, paragraph two of the syllabus; *Fondessy Enterprises*, paragraph two of the syllabus.

Id. at 11. It is with this law in mind that the Court must now render its decision as to the Bump-Stock Ban.

The Bump-Stock Ban and R.C. 9.68 are in direct conflict. The State of Ohio clearly manifested an intent in R.C. 9.68 to regulate the possession and use of firearms in Ohio. In fact, R.C. 9.68(A) states that a person "may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition." This language is clear on its face. R.C. 9.68 includes any component of a firearm. The things addressed in the Bump-Stock Ban are components of firearms. It would seem that this case is at an end.

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Columbus does not agree. Columbus tries to get around the language of R.C. 9.68 by arguing that the Bump-Stock Ban is a ban on gun accessories and not a ban on gun components. In particular, Columbus argues that since a regular firearm stock can be replaced with a bump-stock, a bump-stock is an accessory. As will be seen below, this argument does not hold up to scrutiny.

The Court must first look at what a bump-stock is. At the hearing on July 9, 2018, Plaintiffs presented Mr. Jeff Steley to testify as to firearms and how they work. Via his testimony, the Court finds that Mr. Steley is qualified to testify as to how a bump-stock works in relation to a firearm, more specifically in relation to a rifle. Via this testimony, it is clear that a stock is necessary for the proper safe operation of a rifle. Columbus cannot dispute this. Furthermore, it is clear that in order to install a bump-stock on a rifle, the old stock must be removed and the bump-stock attached in its place. Again, Columbus cannot dispute this. Therefore, it is clear that the bump-stock, when installed, becomes an integral part of the safe operation of a firearm. As such, a bump-stock is not an accessory of a firearm, but a component of a firearm.

Columbus' argument that a bump-stock is an accessory completely revolves around the fact that a bump-stock can be installed by the end user. It argues that since this is so, a bump-stock is an accessory. When taking its logic to the bitter end, it can be seen that Columbus' argument fails.

In order to support its logic, Columbus analogizes the installation of a bump-stock to the installation of a spoiler on a car. Since the spoiler on a car can be changed by the car owner, via Columbus' logic it is an accessory. While it can be

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easily argued that a spoiler on a car is not an accessory, the Court will accept that it is for the sake of argument. Let us now take Columbus' logic further.

The Court likes the car analogy and will stick with it. A car has an engine. That engine has spark plugs. An engine cannot work without spark plugs. Spark plugs are vitally necessary for the process of combustion. It is beyond argument that spark plugs are a component of an engine.

Under Columbus' logic, however, spark plugs are mere accessories. A person can go to a local auto store and buy replacement spark plugs. In fact, a person can buy spark plugs that create more horse power in an engine. These spark plugs can then be installed by the end user of the car. Columbus would have to argue that spark plugs are now accessories and not components. As can be seen, this conclusion is untenable. Regardless of who installs spark plugs, they are components of an engine. Similarly, a bump-stock, regardless of who installs it, is a component of a rifle.

Let us go further. Under Columbus' logic, who actually installs a stock determines whether it is a component or an accessory. Therefore, if a person orders a bump-stock be placed on a rifle directly from the manufacturer, then under Columbus' logic, that bump-stock is now a component of the rifle. This results in a situation where the very possession of a bump-stock is criminal in Columbus depending on who installed it. If the manufacturer installed the bump-stock, you are good. If you installed the bump stock, you go to jail. Two different results for possessing the same product. The logic fails.

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Let us go even further. Under Columbus' logic, since a rifle stock can be changed by the end user, it is then an accessory. Columbus' logic would then dictate that Columbus can ban all stocks. In fact, since most rifle parts can be changed by the end user, Columbus can ban all rifle parts. Ammunition is installed by the end user, Ammunition is now an accessory and can be banned. Under Columbus' logic it can declare an entire gun to be an accessory and ban it. Again, Columbus' reasoning does not take it where it wants to go.

As has been seen, Columbus' logic doesn't work. It is clear that a bump-stock is a component of a firearm. Since this is so, the Bump-Stock Ban forbids something that state law allows, *i.e.* ownership of firearm components. The Bump-Stock Ban is in conflict with R.C. 9.68.

This conclusion is strengthened by the very language used in the Bump-Stock Ban. Columbus Codified Ordinance § 2323.171(C)(1) states that an illegal rate-of-fire acceleration firearm accessory includes "**any part, combination of parts, component, device**, attachment or accessory, that is designed or functions to accelerate the rate of fire..." Columbus is now turning parts and components into accessories. Columbus Codified Ordinance §2323.171 is in direct conflict with R.C. 9.68 and must yield. Plaintiffs have met the third part of the Home Rule Test. The Court finds that Columbus exceeded its Home Rule authority when it enacted Columbus Codified Ordinance §2323.171 and it is therefore, unconstitutional under the Ohio Constitution.

The Court must now move on to Columbus Codified Ordinance §2323.13(A)(3). As shown above, this section makes it illegal for a person who has

been convicted of a misdemeanor domestic violence offense to own a firearm. Plaintiffs argue that this section is in direct conflict with R.C. 2923.13(A)(2). In particular, Plaintiffs argue that Columbus Codified Ordinance §2323.13(A)(3) turns a felony under Ohio law into a mere misdemeanor. As before, Columbus argues that no conflict exists.

In regards to Columbus Codified Ordinance §2323.13(A)(3), the Court must side with Columbus. R.C. 2923.13(A)(2) only prohibits people convicted of a felony crime of violence from owning a firearm. It does not address misdemeanor crimes of violence. Since this is so, Columbus Codified Ordinance §2323.13(A)(3) does not forbid something that R.C. 2923.13(A)(2) allows or allow something that R.C. 2923.13(A)(2) forbids. Since this is so, Columbus Codified Ordinance §2323.13(A)(3) does not conflict with R.C. 2923.13(A)(2). Furthermore, the Court finds that Columbus Codified Ordinance §2323.13, as a whole, does not conflict with either R.C. 2923.13 nor R.C. 9.68. Columbus is free to enforce Columbus Codified Ordinance §2323.13.

After review and consideration, the Court's final judgment in this matter is as follows: First, Plaintiffs have proper standing to bring the present matter. Second, Columbus Codified Ordinance §2323.171 is in conflict with R.C. 9.68 and must yield. Therefore, it is hereby ORDERED that Columbus Codified Ordinance §2323.171 is unconstitutional under the Ohio Constitution and Defendants are hereby permanently enjoined from enforcing it. Third, Columbus Codified Ordinance §2323.13 is not in conflict with either R.C. 2923.13(A)(2) or R.C. 9.68.

Therefore, it is hereby ORDERED that Columbus Codified Ordinance §2323.13 is constitutional under the Ohio Constitution and Defendants are free to enforce it.

This is a final appealable order and there is no just cause for delay. The Clerk shall serve a copy of this decision on all parties in accordance with Civ. R. 58(B).

IT IS SO ORDERED.

Copies to:

David S. Kessler
Counsel for Plaintiffs

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Counsel for Defendants

Steven T. Voigt
Counsel for State of Ohio

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Franklin County Court of Common Pleas

Date: 07-12-2018
Case Title: OHIOANS FOR CONCEALED CARRY ET AL -VS- COLUMBUS CITY ET AL
Case Number: 18CV005216
Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in cursive that reads "David E. Cain". To the left of the signature is the official seal of the Franklin County Court of Common Pleas. The seal is circular with a central emblem and text around the perimeter, including "FRANKLIN COUNTY OHIO" and "COURT OF COMMON PLEAS".

/s/ Judge David E. Cain

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Court Disposition

Case Number: 18CV005216

Case Style: OHIOANS FOR CONCEALED CARRY ET AL -VS-
COLUMBUS CITY ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 18CV0052162018-06-2199840000
Document Title: 06-21-2018-MOTION FOR PRELIMINARY
INJUNCTION - PLAINTIFF: OHIOANS FOR CONCEALED CARRY
Disposition: MOTION RELEASED TO CLEAR DOCKET
2. Motion CMS Document Id: 18CV0052162018-06-2799980000
Document Title: 06-27-2018-MOTION FOR LEAVE TO FILE -
DEFENDANT: COLUMBUS CITY
Disposition: MOTION RELEASED TO CLEAR DOCKET