

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

OHIOANS FOR CONCEALED CARRY, INC. :
c/o its statutory agent, Daniel White

[REDACTED]

:
: Case No. _____

and

PHILIP MULIVOR
[REDACTED]
Cleveland Heights, Ohio 44118,

:
: Judge _____

Plaintiffs,

COMPLAINT

vs.

CITY OF CLEVELAND HEIGHTS, OHIO
40 Severance Circle
Cleveland Heights, Ohio 44118
c/o Edward J. Kelley, Mayor
and c/o Robert C. Downey, City Manager,

Defendant.

Plaintiffs Ohioans for Concealed Carry, Inc. (“OFCC”) and Philip Mulivor (“Mulivor”) for their Complaint against Defendant the City of Cleveland Heights, Ohio (“Defendant”) states and alleges as follows:

FACTS COMMON TO ALL COUNTS

1. OFCC, is an Ohio not-for-profit corporation in good standing with its principal place of business in Cleveland, Ohio.
2. On behalf of its members and all Ohioans, OFCC advocates for and protects the right of the people to keep and bear arms as guaranteed by the constitutions of Ohio and the United States of America.

3. Mulivor, is a citizen of Cleveland Heights, Ohio, in Cuyahoga County, with his personal residence located at [REDACTED], Cleveland Heights, Ohio 44118. As a citizen of Defendant and a law-abiding gun owner, Mulivor is directly impacted by the ordinances described below.

4. Defendant is an Ohio Municipal Corporation organized and existing pursuant to Ohio law, including Ohio Revised Code §703.01 and §703.011 with its city offices located at 40 Severance Circle, Cleveland Heights, Ohio 44118.

5. Defendant has enacted a number of ordinances that violate R.C. §9.68. Specifically, City of Cleveland Heights Codified Ordinance §549.10 (prohibiting exhibiting firearms for sale in a showcase or shop window); §551.01 through, §551.13 (generally requiring a person to obtain an owner's identification card to possess a firearm; requiring registration of firearms; requiring City licenses for dealers; imposing record-keeping requirements on dealers and owners; prohibiting the carrying or transport of handguns without City-issued documents; prohibiting the carrying or transport of loaded handguns and otherwise unlawfully interfering with the right to keep and bear arms); §551.14 (purporting to make exceptions to Ohio's public records act); §551.99 (establishing criminal penalties for violating any of the foregoing); and §923.10 (specifically outlawing the carrying of handguns in City parks, even if the person has a valid Ohio license to carry a concealed handgun). All these ordinances are hereinafter collectively referred to as the "unlawful ordinances".

6. The unlawful ordinances purport to regulate the ownership, possession, purchase, other acquisition, transport, storage, carrying, bearing, sale, or other transfer of firearms, their components, or their ammunition.

7. Jurisdiction and venue are proper because Defendant's conduct giving rise to Plaintiff's claims for relief occurred in Cuyahoga County, Ohio.

REQUEST FOR DECLARATORY JUDGMENT

8. Plaintiffs incorporate the allegations of paragraphs 1 through 7 as if fully restated herein.

9. Ohio Revised Code §9.68 provides, in material part:

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

That statute provides that Ohio state law preempts the field of firearm regulation, thereby prohibiting inferior government entities from infringing upon the right of the people to keep and bear arms.

10. Defendant did enact the unlawful ordinances and, as described below, abjectly refuses to repeal them.

11. Plaintiffs have corresponded with Defendant and explained the import of Ohio Revised Code §9.68, and requested that the City repeal the unlawful ordinances.

12. For example, Mulivor spoke with Police Chief Martin Lentz who stated "this is just something nice we do for public safety, but we don't actually enforce that law," referring to City of Cleveland Heights Codified Ordinance §923.10.

13. Mulivor has in fact made several attempts to urge Defendant to repeal the unlawful ordinances. Mulivor had conversations with then candidate for City Council Jason Stein, who promised to address the matter if elected.

14. Council Member Jason Stein became a member of City Council in 2011.

15. Mulivor has made attempts to address the matter with now Council Member Jason Stein reminding him of his campaign promise. However, Mulivor's entreaties have been completely ignored, and City Council has taken no action to repeal the unlawful ordinances. Mulivor's final attempt was made by letter on July 22, 2011 to Council Member Jason Stein.

16. OFCC made further attempts at avoiding litigation on May 23, 2011 through its representative Christopher Harben ("Harben"), who telephoned John Gibbon, the Cleveland Heights City Law Director.

17. After introducing himself (to which John Gibbon replied, "I know who you are"), Harben explained the law and repeated OFCC's request that Defendant repeal the unlawful ordinances. Harben reminded John Gibbon that R.C. §9.68 had been upheld by the Ohio Supreme Court. The Law Director stated that he disagreed with the statute and the recent Ohio Supreme Court case law on the issue, specifically *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318.

18. When Harben reiterated Plaintiff OFCC's position, the Law Director laughed and said, "I know what your position is," and hung up on Harben.

19. Upon information and belief, Defendant continues to purposely and knowingly violate R.C. §9.68 as of this filing, and maintains the unlawful ordinances.

20. Plaintiffs are entitled to declaratory judgment invalidating the unlawful ordinances, and are also entitled to recover their costs and reasonable attorney fees.

21. Plaintiffs request this Court declare Cleveland Heights Codified Ordinance Part Five (specifically §549.10, §551.01, §551.02, §551.03, §551.04, §551.05, §551.06, §551.07, §551.08, §551.09, §551.10, §551.11, §551.12, §551.13, §551.14, §551.99) as well as City of Cleveland Heights Codified Ordinance §923.10, to be unlawful and to further grant a permanent

injunction against the enforcement of said ordinances and future violation of §9.68 of the Ohio Revised Code.

22. Plaintiffs further request this Court to award costs and reasonable attorney fees to Plaintiffs in accordance with §9.68 of the Ohio Revised Code.

WHEREFORE, Plaintiffs respectfully request a declaratory judgment against Defendant as set forth above together with all attorney fees, interest, court costs, and for such other relief that the Court deems just and equitable.

Respectfully submitted,

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