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Hamilton County, Ohio
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**BUCKEYE FIREARMS
FOUNDATION**

A 1803098

vs.

THE CITY OF CINCINNATI

**FILING TYPE: INITIAL FILING (OUT OF COUNTY) WITH NO
JURY DEMAND**

PAGES FILED: 18

EFR200

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

BUCKEYE FIREARMS FOUNDATION,
INC.
c/o Dean Rieck, Executive Director
P.O. Box 357
Greenville, Ohio 45331

and

OHIOANS FOR CONCEALED CARRY
c/o Jeffrey Garvas, President
503 South Front Street, Suite 240B
Columbus, Ohio 43215

and

JORDAN TELTING
1503 Governor Terrace
Cincinnati, Ohio 45215

Plaintiffs,

vs.

THE CITY OF CINCINNATI
c/o Paula Boggs Muething
801 Plum Street, Rm. 214
Cincinnati, Ohio 45202

and

PAULA BOGGS MUETHING,
In Her Official Capacity as City Solicitor
801 Plum Street, Rm. 214
Cincinnati, Ohio 45202

Defendants.

: CASE NO.:

: JUDGE:

: **COMPLAINT FOR:**

: Count 1: Injunctive Relief

: Count 2: Declaratory Judgment

COMPLAINT

NOW COME Buckeye Firearms Foundation, Inc., Ohioans for Concealed Carry, Inc., and Jordan Telting (collectively referred to as the “Plaintiffs”), for their Complaint seeking an Injunction and Declaratory Judgment against the City of Cincinnati, Ohio, and Ms. Paula Boggs Muething, in her official capacity as City Solicitor (collectively referred to as the “Defendants”), who state as follows:

THE PARTIES

1. Plaintiff, Buckeye Firearms Foundation, Inc., is a not-for-profit corporation duly organized under the laws of the State of Ohio, with its principle address at P.O. Box 357, Greenville, Ohio (hereinafter referred to as “BFF”). BFF is a grassroots organization with a mission to defend and advance the rights of more than 4 million Ohio citizens to own and use firearms for all legal activities, including self-defense, hunting, competition, and recreation.
2. Plaintiff, Ohioans for Concealed Carry, Inc., is a not-for-profit corporation duly organized under the laws of the State of Ohio, with its principle address at P.O. Box 247, Avon, Ohio (hereinafter referred to as “OFCC”). OFCC is a grassroots organization, formed in 1999, dedicated to expanding and preserving the rights of all gun owners in Ohio.
3. Plaintiff, Jordan Telting, is an individual taxpayer residing in Cincinnati, Ohio employed as an armed security officer in or around Cincinnati.
4. Defendant, City of Cincinnati, (hereinafter “City”) is a municipal corporation, with offices at 801 Plum Street, Cincinnati, Ohio.
5. Defendant, Ms. Paula Boggs Muething, serves in her official capacity as City Solicitor for the City and has offices at 801 Plum Street, Cincinnati, Ohio.
6. Defendants conducted business and/or engaged in unlawful acts within Hamilton County, Ohio, in connection with the allegations herein.

JURISDICTION AND VENUE

7. This Court has personal jurisdiction over Defendants.
8. This Court has subject matter jurisdiction over the instant matter pursuant to Article IV, §3(B)(1) of the Ohio Constitution, and pursuant to R.C. §9.68, R.C. §733.59., R.C. Chapter 2721, and R.C. Chapter 2727.

9. Venue is proper in this Court pursuant to Civ. R. 3(B)(3) and (6).

FACTUAL BACKGROUND

10. On May 9, 2018, Cincinnati City Council passed an emergency Ordinance (No. 91-2018) banning “trigger activators” within city limits (the “Ordinance”).
11. The Ordinance, attached hereto and incorporated herein as “Exhibit 1,” as codified in Cincinnati Municipal Code § 910-24, makes it unlawful to possess, use, or sell “trigger activators,” defined as “a device designed or functioning to accelerate the rate of fire of a firearm to approximate an automatic weapon, including bump stocks, trigger cranks, slide fire devices, and other similar accessories.”
12. Through the Ordinance, the City attempts to circumvent state law preemption as provided for under R.C. §9.68. R.C. §9.68 restricts the home rule powers of municipalities in Ohio, such that they may not enact local ordinances that are in conflict with state or federal law with respect to the possession of firearms, parts of firearms, components of firearms, or ammunition. The Ordinance violates R.C. §9.68.
13. Upon information and belief, the Ordinance is immediately effective and enforceable in the City.
14. On May 14, 2018 and June 12, 2018, Plaintiffs sent Paula Boggs Muething written correspondence, attached hereto and incorporated herein as “Exhibit 2,” advising that the Ordinance was unconstitutional, a plain violation of Ohio’s firearm preemption statute, R.C. §9.68, and that the City Attorney must take action to invalidate or enjoin enforcement of the Ordinance.
15. On May 21, 2018 Defendants advised Plaintiffs in writing, attached hereto and incorporated herein as “Exhibit 3,” that they had no intention of enjoining and/or repealing the Ordinance. Defendants did not reply to the June 12, 2018 letter.
16. Defendant Paula Boggs Muething has not taken any action to oppose the City’s violation of R.C. §9.68, and upon information and belief, has no intention of so acting.

FIRST CAUSE OF ACTION **Injunctive Relief under R.C. §733.59 and Chapter 2727**

17. Plaintiffs hereby incorporate by reference all of the allegations contained in paragraphs 1 through 16 of their Complaint as if fully set forth herein.

18. Plaintiff, Jordan Telting, is a resident and tax payer of the City and has submitted a written demand upon the City Solicitor, Paula Boggs Muething, to apply for an injunction prohibiting enforcement of the Ordinance pursuant to R.C. §733.56.
19. Defendant, Paula Boggs Muething, has a clear legal duty, pursuant to R.C. §733.56, and Cincinnati City Charter, Article 4, Section 5, to apply for an injunction to restrain the misapplication of funds of the City, the abuse of its powers, or the execution or performance of any contract made on behalf of the City in contravention of law, or which was procured by fraud or corruption.
20. Implementation of the Ordinance has resulted in, or is imminently likely to result in, the misapplication of funds of the City by virtue of efforts by the City to advertise and promote the Ordinance, enforce the ordinance, and implement the ordinance. The Ordinance itself is an abuse of the City's powers, and has involved, or is reasonably likely to involve, execution of contracts with third parties concerning the advertisement, enforcement, and implementation of the unlawful provisions therein.
21. Because Defendant, Paula Boggs Muething, has indicated she will not seek an injunction to prevent the enforcement of the Ordinance, Plaintiff, Jordan Telting, has a statutory right to bring a taxpayer's action for injunctive relief pursuant to R.C. §733.59.
22. Plaintiffs also have a right to injunctive relief under R.C. Chapter 2727 to restrain Defendants from the commission or continuance of acts which, during the litigation, would produce great or irreparable injury to the Plaintiffs or their members.
23. Accordingly, pursuant to R.C. §733.59 and R.C. Chapter 2727, Plaintiffs are entitled to preliminary and permanent injunctions prohibiting Defendants from expending funds, executing contracts, or taking any action in furtherance of implementation, enforcement, or advertisement of the Ordinance.
24. Plaintiffs have deposited security for costs with the Clerk of Courts, as required by R.C. §733.59, and pursuant to the rules of this Court concerning the filing of civil actions and stand ready to make such additional deposits as may be ordered.

SECOND CAUSE OF ACTION
Declaratory Judgment

25. Plaintiffs hereby incorporate by reference all of the allegations contained in paragraphs 1 through 16 of their Complaint as if fully set forth herein.

26. Pursuant to R.C. Chapter 2721 and R.C. §9.68, Plaintiffs have a statutory right to bring a declaratory judgment action.
27. Plaintiffs are entitled to declaratory judgment and request this Court declare the Ordinance, as well as every other Ordinance maintained by Defendant City that purports to regulate the right of a person to possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components and ammunition, to be unlawful.
28. Ohio Revised Code §9.68 provides Plaintiffs a private right of action to challenge any ordinance, rule, or regulation in conflict with it. The statute further mandates an award of attorney fees, costs, and expenses to any person or entity that prevails in a challenge to a local ordinance.

WHEREFORE, Plaintiffs pray that judgment be granted in their favor and against Defendants, for the following relief:

- (a) Preliminary and permanent injunctions restraining Defendants from enforcing, promulgating, or otherwise effectuating the Ordinance;
- (b) Declaratory judgment that the Ordinance violates R.C. 9.68;
- (c) Judgment that Plaintiffs have prevailed in a challenge to the Ordinance, and are entitled to recover their costs and reasonable attorney fees from Defendants;
- (d) Costs;
- (e) Reasonable attorneys' fees; and
- (f) Such other and further relief that this Court deems just and proper.

Respectfully Submitted,

/s/ James P. Sean Maloney II
James P. Sean Maloney II (0061016)
8917 Eagle Ridge Ct.
West Chester, Ohio 45069
Ph: 513.463.0073
smaloneyesq@gmail.com

/s/ Ronald Lemieux

Ronald Lemieux (0093536)

P.O. Box 19183.

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/s/ David S. Kessler

David S. Kessler (0041982)

Stephen P. Postalakis (0063240)

Haynes Kessler Myers & Postalakis Incorporated

300 West Wilson Bridge Road, Suite 100

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/s/ Derek A. DeBrosse

Derek A. DeBrosse (0084183)

Barney DeBrosse, LLC

503 South Front Street, Suite 240B

Columbus, Ohio 43215

Ph: 614.326.1919; Fax: 614.326.3232

E: derek@barneydebrosse.com

Attorneys for Plaintiffs

Exhibit # 1

EMERGENCY

City of Cincinnati

AEP *BM*

An Ordinance No. 91 - 2018

ORDAINING new Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," of Chapter 910, "Public Order," of the Cincinnati Municipal Code to implement appropriate and necessary municipal regulations on firearm accessories or attachments.

WHEREAS, trigger activators, such as bump stocks and trigger cranks, are devices designed to dramatically increase the firing rate of otherwise legal weapons to the firing speed of unlawful weapons; and

WHEREAS, the use of bump stocks allowed a single gunman to kill nearly sixty innocent people and injure hundreds more on October 1, 2017 in Las Vegas, Nevada in the deadliest mass shooting in American history; and

WHEREAS, City Council recognizes that mass shootings pose a serious threat to the health, safety, and security of the citizens of Cincinnati; and

WHEREAS, Ohio Revised Code § 9.68 prohibits municipalities from regulating the ownership, possession, or sale of firearms, their components, and their ammunition, but does not restrict municipal regulations on firearm accessories or attachments; and

WHEREAS, trigger activators are not firearm components or parts that are essential to the function of a weapon, but rather are optional aftermarket accessories that may be purchased to modify the operation of a firearm; and

WHEREAS, City Council finds it necessary to take appropriate action to attempt to prevent a large-scale act of gun violence like the one which took place in Las Vegas from occurring in Cincinnati by any use of trigger activators which are capable of inflicting maximum harm on civilian populations; and

WHEREAS, upon passage of this ordinance, the City Manager and the Cincinnati Police Department shall be authorized to arrange for a safe and legal means of disposal of such trigger activators for any person currently possessing a trigger activator within City limits; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That new Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," of Chapter 910, "Public Order," of the Cincinnati Municipal Code ("CMC") is hereby ordained to read as follows:

Sec. 910-24. Possession, Use, and Sale of Trigger Activators Prohibited.

- (a) "Trigger Activator" is hereby defined as a device designed or functioning to accelerate the rate of fire of a firearm to approximate an automatic weapon, including bump stocks, trigger cranks, slide fire devices, and other similar accessories.
- (b) It shall be unlawful for any person to own, possess, sell, or use a trigger activator, as defined herein, within the municipal limits of Cincinnati.
- (c) Whoever violates this section is guilty of possession of a trigger activator, a misdemeanor of the first degree.

Section 2. That the City Manager is hereby authorized to issue notice to the public regarding the new CMC Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," and arrange for a safe and legal means of disposal for any person possessing a trigger activator in violation of the terms of CMC 910-24.

Section 3. That the appropriate City officials are hereby authorized to take all necessary action to carry out the provisions of Sections 1 and 2 herein.

Section 4. That the provisions of CMC Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," shall take effect 60 days after the effective date of this ordinance.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to allow the City Administration to initiate appropriate preparations for implementation of Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited."

Passed: May 9, 2018

Attest: [Signature]
Clerk

[Signature]
John Cranley, Mayor

HEREBY CERTIFY THAT ORDINANCE No. 910-2018
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 5-22-2018
[Signature]
CLERK OF COUNCIL



THE LAW
OFFICE OF
RONALD
LEMIEUX

Ronald Lemieux, Esq.

Ph: (216) 339-3284 Fax: (216) 208-8985

P.O. Box 19183, Cleveland, OH 44119 • E: rlemieux@ronaldlemieuxlaw.com • ronaldlemieuxlaw.com

Exhibit # 2

May 14, 2018

Sent by Regular U.S. Mail and Facsimile

Ms. Paula Boggs Muething
City Solicitor, City of Cincinnati
801 Plum Street, Rm. 214
Cincinnati, Ohio 45202

Re: Cincinnati Municipal Code § 910-24

Ms. Boggs Muething,

I am writing on behalf of my client, Buckeye Firearms Association.

It is our understanding that Cincinnati City Council passed an emergency Ordinance (No. 91-2018) on May 9, 2018 banning the possession, use, or sale of so-called "trigger activators" within city limits (the "Ordinance"). Further, I recently verified with an attorney in your law department that the Ordinance is immediately effective and enforceable in the City of Cincinnati (the "City"). We have since received a signed copy of the Ordinance, which I have attached to this letter for your reference.

The Ordinance is in clear violation of Ohio Revised Code § 9.68, which restricts the home rule powers of municipalities in Ohio. O.R.C. § 9.68 provides that:

(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. (Emphasis added).

On its face, not only is the Ordinance unconstitutional, but it is also in direct contravention of Ohio law expressly made by statute. The Ordinance makes it unlawful to possess, use, or sell “trigger activators,” defined as “a device designed or functioning to accelerate the rate of fire of a firearm to approximate an automatic weapon, including bump stocks, trigger cranks, slide fire devices, and other similar accessories” Cincinnati Municipal Code § 910-24(A). The Ordinance makes that which is legal in Ohio under state and federal law, illegal, and is a prime example of a municipality’s unlawful attempt to create a patchwork of laws.

With respect to the language of the Ordinance itself, we reject the premise that bump stocks, trigger cranks, or slide fire devices are in any way, shape, or form “accessories”; or that, even if they were accessories, that accessories are not covered under state preemption doctrine. The reality of the matter is that bump stocks and other similar products are a “**component**” or “**part**” of a firearm. Said products are made to be fixed to their respective firearm as an integral component thereof. Armalite style rifles, the most popular rifle design in America, are specifically made to be modular in design and accept a wide variety of interchangeable components or parts. The design of these rifles are made to be built and assembled with customization in mind, including assemblage of parts prohibited by the Ordinance.

The City attempts to circumvent state law and the State of Ohio’s rightful option to occupy the entire field of firearms regulation. There is a rightful and valid purpose to O.R.C. § 9.68 to create uniformity throughout the state. The City blatantly defies this overriding purpose by way of a misguided argument in semantics without an understanding or consideration of legislative intent. If the City wanted bumps stocks made illegal, the appropriate course of action was to support legislation to that effect at the state level. No one is above the rule of law, not even a municipality or its City Council.

Our position is consistent with Ohio case law as it relates to restricting a municipality’s legislative whims within the area of firearms regulations. “A local ordinance that is an exercise of police power must give way if it conflicts with a general law.” *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967 (2008). “The General Assembly reiterated the need for uniformity in R.C. 9.68(A), which represents an attempt by that body to nullify all municipal laws impeding uniform application of the state statute.” *Id.* at ¶ 40. “The General Assembly could not have been more direct in expressing its intent for statewide comprehensive handgun possession laws.” *Id.* at ¶ 41. “A comprehensive enactment need not regulate every aspect of disputed conduct, nor must it regulate that conduct in a particularly invasive fashion.” *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370, ¶ 21 (2010). “Moreover, statements made on the floor

of the House of Representatives and the Senate [discussing R.C. 9.68] reflect the General Assembly's belief that the legislation would bring uniformity to the state, superseding the existing patchwork of local firearm ordinances, which varied from one jurisdiction to the next." *Id.* at ¶ 24.

This letter serves as an official demand that you, as City Solicitor, fulfill your obligation under Ohio Revised Code § 733.56, and apply for an injunction to restrain the City's misapplication of funds, abuse of powers, and execution of contracts in contravention of the law. Pursuant to this governing state law, it is the City Solicitor's obligation to prevent the City, by and through its various actors and agents, from enforcing, promulgating, or otherwise effectuating the Ordinance. We expect you to take action immediately.

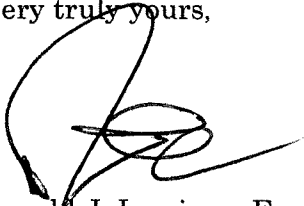
As an aside, we also find the legislative maneuvering pertaining to the enactment of the Ordinance particularly disturbing. The recitals of the Ordinance cite the Las Vegas shooting, on October 1, 2017, as the main catalyst for this *emergency* enactment. Despite the fact eight months have elapsed since the Las Vegas shooting, Cincinnati City Council passed the Ordinance without prior and effective public notice or any opportunity for actual public hearings on the matter. Had there been an actual opportunity for this ordinance to be properly ventilated in a public forum, your City Council would have heard from Buckeye Firearms Association, and no doubt residents and tax payers of the City, regarding the illegal nature of the Ordinance and the necessary waste of tax payer money. Moreover, we have received reports that at least one member of your City Council made it publicly known that the enactment of the Ordinance was against the law and opened the City up to costly litigation despite the City's growing deficit.

The City Solicitor must direct City Council to repeal the Ordinance immediately and, in the meantime, advise the City's mayor to deliver an executive decree that prevents the enforcement of the Ordinance. Additionally, if the City does not immediately set forth a plan to repeal this Ordinance, we will pursue every available remedy at law, including declaratory judgment and injunctive relief in addition to a prayer for all resulting attorney fees and costs.

As a final matter and for clarity sake, we ask that the City explain in writing whether the Ordinance is currently enforceable, and to what extent, given the contradictory provisions of the Ordinance, namely Section 4 which states that "the provisions of CMC Section 910-24, 'Possession, Use, and Sale of Trigger Activators Prohibited,' shall take effect 60 days after the effective date of this ordinance," whereas Section 5 states the Ordinance is effective immediately. Further, please also advise on what steps, if any, have been taken or will be taken pursuant to Section 2 of the Ordinance that "the City Manager is hereby authorized to issue notice to the public... and arrange for a safe and legal means of disposal for any person possessing a trigger activator in violation of the terms of CMC 910-24."

I respectfully ask you forward this correspondence to your client and that you respond as requested herein and address whether the City intends to remedy this issue. I ask for a reply within seven days so that all parties involved might avoid costly litigation.

Very truly yours,

A handwritten signature in black ink, appearing to be 'R. Lemieux', written over a horizontal line.

Ronald J. Lemieux, Esq.

[Attachment]

EMERGENCY

City of Cincinnati

AEP *BM*

An Ordinance No. 91 - 2018

ORDAINING new Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," of Chapter 910, "Public Order," of the Cincinnati Municipal Code to implement appropriate and necessary municipal regulations on firearm accessories or attachments.

WHEREAS, trigger activators, such as bump stocks and trigger cranks, are devices designed to dramatically increase the firing rate of otherwise legal weapons to the firing speed of unlawful weapons; and

WHEREAS, the use of bump stocks allowed a single gunman to kill nearly sixty innocent people and injure hundreds more on October 1, 2017 in Las Vegas, Nevada in the deadliest mass shooting in American history; and

WHEREAS, City Council recognizes that mass shootings pose a serious threat to the health, safety, and security of the citizens of Cincinnati; and

WHEREAS, Ohio Revised Code § 9.68 prohibits municipalities from regulating the ownership, possession, or sale of firearms, their components, and their ammunition, but does not restrict municipal regulations on firearm accessories or attachments; and

WHEREAS, trigger activators are not firearm components or parts that are essential to the function of a weapon, but rather are optional aftermarket accessories that may be purchased to modify the operation of a firearm; and

WHEREAS, City Council finds it necessary to take appropriate action to attempt to prevent a large-scale act of gun violence like the one which took place in Las Vegas from occurring in Cincinnati by any use of trigger activators which are capable of inflicting maximum harm on civilian populations; and

WHEREAS, upon passage of this ordinance, the City Manager and the Cincinnati Police Department shall be authorized to arrange for a safe and legal means of disposal of such trigger activators for any person currently possessing a trigger activator within City limits; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That new Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," of Chapter 910, "Public Order," of the Cincinnati Municipal Code ("CMC") is hereby ordained to read as follows:

Sec. 910-24. Possession, Use, and Sale of Trigger Activators Prohibited.

- (a) "Trigger Activator" is hereby defined as a device designed or functioning to accelerate the rate of fire of a firearm to approximate an automatic weapon, including bump stocks, trigger cranks, slide fire devices, and other similar accessories.
- (b) It shall be unlawful for any person to own, possess, sell, or use a trigger activator, as defined herein, within the municipal limits of Cincinnati.
- (c) Whoever violates this section is guilty of possession of a trigger activator, a misdemeanor of the first degree.

Section 2. That the City Manager is hereby authorized to issue notice to the public regarding the new CMC Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," and arrange for a safe and legal means of disposal for any person possessing a trigger activator in violation of the terms of CMC 910-24.

Section 3. That the appropriate City officials are hereby authorized to take all necessary action to carry out the provisions of Sections 1 and 2 herein.

Section 4. That the provisions of CMC Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," shall take effect 60 days after the effective date of this ordinance.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to allow the City Administration to initiate appropriate preparations for implementation of Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited."

Passed: May 9, 2018

Attest: [Signature]
Clerk

[Signature]
John Cranley, Mayor

HEREBY CERTIFY THAT ORDINANCE No. 910-2018
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 5-22-2018
[Signature]
CLERK OF COUNCIL



THE LAW
OFFICE OF
RONALD
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June 12, 2018

Sent by Regular U.S. Mail and Facsimile

Ms. Paula Boggs Muething
City Solicitor, City of Cincinnati
801 Plum Street, Rm. 214
Cincinnati, Ohio 45202

Re: Cincinnati Municipal Code § 910-24

Ms. Boggs Muething,

I am writing on behalf of my clients, Jordan Telting, Buckeye Firearms Foundation, and Ohioans for Concealed Carry.

Two weeks ago I sent you a demand letter on behalf of Buckeye Firearms Association. This letter serves as an additional demand on behalf of all my aforementioned clients, including Mr. Telting, in his individual capacity and as a tax-paying resident of the City of Cincinnati.

As you are aware, Cincinnati City Council passed an emergency Ordinance (No. 91-2018) on May 9, 2018 banning the possession, use, or sale of so-called "trigger activators" within city limits (the "Ordinance"). My office is in receipt of correspondence from Deputy City Solicitor, Terry Nestor in response to my May 14, 2018 demand letter pertaining to the Ordinance. Unfortunately, Mr. Nestor failed to address several critical inquiries and responded that you, as City Solicitor, refuse to take injunctive action as required under R.C. 733.56.

Much of what follows hereunder was stated to you in my prior letter; nevertheless, it is worth repeating again for emphasis and procedural purposes.

The Ordinance is in clear violation of Ohio Revised Code § 9.68, which restricts the home rule powers of municipalities in Ohio. O.R.C. § 9.68 provides that:

(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. (Emphasis added).

On its face, not only is the Ordinance unconstitutional, but it is also in direct contravention of Ohio law expressly made by statute. The Ordinance makes it unlawful to possess, use, or sell “trigger activators,” defined as “a device designed or functioning to accelerate the rate of fire of a firearm to approximate an automatic weapon, including bump stocks, trigger cranks, slide fire devices, and other similar accessories” Cincinnati Municipal Code § 910-24(A). The Ordinance makes that which is legal in Ohio under state and federal law, illegal, and is a prime example of a municipality’s unlawful attempt to create a patchwork of laws.

With respect to the language of the Ordinance itself, we reject the premise that bump stocks, trigger cranks, or slide fire devices are in any way, shape, or form “accessories”; or that, even if they were accessories, that accessories are not covered under state preemption doctrine. The reality of the matter is that bump stocks and other similar products are a “**component**” or “**part**” of a firearm. Said products are made to be fixed to their respective firearm as an integral component thereof. Armalite style rifles, the most popular rifle design in America, are specifically made to be modular in design and accept a wide variety of interchangeable components or parts. The design of these rifles are made to be built and assembled with customization in mind, including assemblage of parts prohibited by the Ordinance.

The City attempts to circumvent state law and the State of Ohio’s rightful option to occupy the entire field of firearms regulation. There is a rightful and valid purpose to O.R.C. § 9.68 to create uniformity throughout the state. The City blatantly defies this overriding purpose by way of a misguided argument in semantics without an understanding or consideration of legislative intent. If the City wanted bumps stocks made illegal, the appropriate course of action was to support legislation to that effect at the state level. No one is above the rule of law, not even a municipality or its City Council.

Our position is consistent with Ohio case law as it relates to restricting a municipality’s legislative whims within the area of firearms regulations. “A local ordinance that is an exercise of police power must give way if it conflicts with a general law.” *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967 (2008).

"The General Assembly reiterated the need for uniformity in R.C. 9.68(A), which represents an attempt by that body to nullify all municipal laws impeding uniform application of the state statute." *Id.* at ¶ 40. "The General Assembly could not have been more direct in expressing its intent for statewide comprehensive handgun possession laws." *Id.* at ¶ 41. "A comprehensive enactment need not regulate every aspect of disputed conduct, nor must it regulate that conduct in a particularly invasive fashion." *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370, ¶ 21 (2010). "Moreover, statements made on the floor of the House of Representatives and the Senate [discussing R.C. 9.68] reflect the General Assembly's belief that the legislation would bring uniformity to the state, superseding the existing patchwork of local firearm ordinances, which varied from one jurisdiction to the next." *Id.* at ¶ 24.


This letter serves as an official demand that you, as City Solicitor, fulfill your obligation under Ohio Revised Code § 733.56, and apply for an injunction to restrain the City's misapplication of funds, abuse of powers, and execution of contracts in contravention of the law. Pursuant to this governing state law, it is the City Solicitor's obligation to prevent the City, by and through its various actors and agents, from enforcing, promulgating, or otherwise effectuating the Ordinance. We expect you to take action immediately.

The City Solicitor must direct City Council to repeal the Ordinance immediately and, in the meantime, advise the City's mayor to deliver an executive decree that prevents the enforcement of the Ordinance. Additionally, if the City does not immediately set forth a plan to repeal this Ordinance, we will pursue every available remedy at law, including declaratory judgment and injunctive relief, together with a temporary restraining order, in addition to a prayer for all resulting attorney fees and costs.

Further, please also advise on what steps, if any, have been taken or will be taken pursuant to Section 2 of the Ordinance that "the City Manager is hereby authorized to issue notice to the public... and arrange for a safe and legal means of disposal for any person possessing a trigger activator in violation of the terms of CMC 910-24."

I respectfully ask you forward this correspondence to your client and that you respond as requested herein and address whether the City intends to remedy this issue. I ask for a written reply within five days so that all parties involved might avoid costly litigation.

Very truly yours,



Ronald J. Lemieux, Esq.

cc: Terry Nestor, Deputy City Solicitor

Exhibit # 3



May 21, 2018

via email to rlemieux@ronaldlemieuxlaw.com
and regular mail

Ronald Lemieux
P.O. Box 19183
Cleveland, Ohio 44119

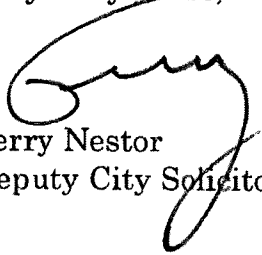
Dear Mr. Lemieux:

Gun violence affects each municipality differently but has had a uniformly devastating impact on the lives and happiness of the citizens of the United States. Unfortunately, neither Ohio nor our federal government has regulated violence enhancing gun accessories like bump stocks.

As you know, in Ohio, local governments have the home rule power to legislate when the municipal regulation is "not in conflict with general laws." §3 Article 18, Ohio Constitution. In both *Ohioans for Concealed Carry v. Clyde* and *Cleveland v. State*, the Ohio Supreme Court construed R.C. 9.68 *in pari materia* with applicable Ohio firearms laws. We have closely examined those laws and have not identified where the State of Ohio purports to regulate "bump stocks, trigger cranks, slide fire devices, and other similar accessories." CMC 910-24. If you believe that Ohio has a law that conflicts with Cincinnati's, please identify it so we can conduct the appropriate analysis.

The Solicitor will not be filing an injunction based on your request. Because the Council passed the Ordinance as an emergency measure, it is effective now. Cincinnati welcomes the opportunity to lead on common sense safety while our state and federal governments fail to act.

Very truly yours,



Terry Nestor
Deputy City Solicitor