CASES *continued from page 35*

ceedings. *Hesse v. Town of Jackson*, 541 F. 3d 1240 (10th Cir. 2008).

Preemption
Home Rule and Gun Laws

In early 2004, the Ohio legislature enacted a bill, H.B. No. 12, which created a licensing procedure for handgun owners in Ohio. It provided that a licensed handgun owner could "carry a concealed handgun anywhere in this state," except as specifically set out in the legislation. The exceptions included police stations, jails, airports, schools and school zones, court houses, and any place in which federal law prohibited the carrying of handguns. The law also allowed private employers and landowners to prohibit gun possession on their property as they deemed appropriate, but specifically stated that "[n]o municipality may adopt or continue in existence any ordinance... that attempts to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed." The City of Clyde subsequently adopted an ordinance prohibiting persons "located within the confines of any City Park" from "knowingly carry[ing] or hav[ing], on or about his person or readily to hand, any deadly weapon, irrespective of whether such person has been issued a license to carry a concealed handgun pursuant to" the state concealed-carry law or pursuant to a comparable provision of the law of any other state. Ohioans for Concealed Carry, Inc. filed suit, seeking an order striking down the ordinance and for injunctive relief prohibiting Clyde from curtailing gun owners' rights. Both Ohioans for Concealed Carry, Inc. and Clyde moved for summary judgment. The issue was the ability of the municipality to regulate handgun possession on its own property by persons possessing a valid permit to carry a concealed handgun. The trial court granted judgment in favor of the City, ruling that the state law was not a general law for home-rule purposes and, therefore, the ordinance did not run afoul of Section 3 of the Home Rule Amendment, Article XVIII, of the Ohio Constitution. While an appeal was pending, the State legislature enacted a further law, R.C. 9.68(A), which referred to a "fundamental individual right" to "keep and bear arms"; expressed the legislature's desire "to provide uniform laws throughout the state" on the ownership and possession of firearms; and provided that, except as specifically provided by the federal or state constitutions, state law, or federal law, a person "may own, possess, purchase, ...or keep any firearm" without further license. The appellate court held that, because R.C. 9.68(A) precluded any law other than a state or federal law from infringing on the right to carry arms, the law preempted the Clyde ordinance.

On further appeal, the City argued that the ordinance was a constitutional exercise of its home-rule power—first, because regulation of its parks was purely a matter of local self-government, and not its police power; second, the concealed handgun law's multiple exceptions rendered uniform application impossible. A divided panel of the Supreme Court of Ohio rejected these arguments, finding the ordinance was, in fact, an exercise of the City's police power that conflicted with the general law governing licenses to carry concealed handguns. It was, thus, unconstitu-tional. In enacting the gun laws, the State legislature "could not have been more direct in expressing its intent for statewide comprehensive handgun-possession laws." The ordinance was clearly in conflict with the state laws, which permitted a licensed gun owner to carry a concealed handgun in Clyde's parks ("indeed, in any municipal park across the state"), being "the very con-duct prohibited" by the Clyde ordinance. (One of the dissenting judges held that given "the arbitrary and unreasonable distinction between public and private landowners, the fact that the law is subject to the will of private landowners, and the fact that the statute fails to meet its stated objective of establishing uniformity in its designation of those places in which persons may carry concealed handguns," R.C. 2923.126 was not a general law and, therefore, did not take precedence over the ordinance.) *Ohioans for Concealed Carry, Inc. v. Clyde*, No. 2007-0960, 2008 WL 4274503 (Ohio Sept. 18, 2008).

Search and Seizure
Authority to Consent

In 2006, the sheriff's office in Adams County received a visit from Ms. Lawicki. Lawicki and her daughter had been living with Lawicki's ex-husband, Ryerson, for about a year. Lawicki left him and moved in with a friend three days before. She told police she wanted to return to the house to retrieve her belongings, but could not get in because Ryerson was in jail and had changed the locks. The officers told Lawicki that she could break a window to enter the home as long as she lived there. Lawicki claimed that she did live at the house. She broke in to get her things, but was unaware that Ryerson had asked a neighbor to look after the house. The neighbor reported a burglary after he saw the broken window. The next day, the police interviewed Lawicki, who repeatedly stated that she lived at the home. The house was in Ryerson's name, she said, but she had bought the property with him. She lived there with their baby and ran their business out of the house. Lawicki also claimed that Ryerson sold drugs and stored weapons at the house. The officers asked Lawicki if they could search the home and Lawicki agreed, signing a permission-to-search form. The neighbor willingly let the police into the home. Ryerson had phoned the neighbor earlier to tell him to get rid of "a little rapid fire BB gun" stashed in the garage drywall. Ryerson also wrote a note to prison officials about his concern that Lawicki was "planting illegal things in the House ...her know boyfriend he is a Drug Dealer and I think when they broke in last knight they put some thing in my house." After police listened to a tape of Ryerson's call, they returned to the house and conducted a second search, finding a machine gun concealed in the garage wall. Ryerson failed in his motion to suppress the evidence, and was convicted and sentenced to 48 months in prison.

On appeal, Ryerson claimed that Lawicki's consent did not justify a