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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

warrantless search of his house. The U.S. Court of Appeals for the Seventh Circuit disagreed. Finding it was a "close case," the court nonetheless held that, because of Lawicki's long-term and continuing residence in Ryerson's home, she had actual authority to consent to the search, and the police had acted reasonably in believing that she lived there. Although a third party generally could not consent to a warrantless search of another's home, there was an exception when the government could show, by a preponderance of evidence, that the other party "possessed common authority over, or other sufficient relationship to, the premises or effects sought to be inspected." Here, the court held there was enough of a connection between Lawicki and the house. Although Ryerson was the owner of the house, Lawicki had lived with him in the house for a "significant period" (ten months) immediately prior to the search. Lawicki had not "abandoned" the premises and remained connected the home through her co-ownership (with Ryerson) of a business on the premises (all of the company records remained in the house). In addition to actual authority, the second search (when the police found the gun) was lawful on the basis of apparent authority. Ryerson's agent—the neighbor—willingly allowed the police and Lawicki to enter, and Ryerson's note identified Lawicki as his girlfriend who lived on the premises, which suggested that she still had a right of access to the house. *U.S. v. Ryerson*, No. 07-1654, 2008 WL 4248193 (7th Cir. Sept. 18, 2008). ML

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Well-regulated Militias, and Criminal Street Gangs, Chapman University School of Law, Legal Studies Research Paper Series, Paper No. 08-302 (copy available at: http://ssrn.com/abstract=1245402).
33. McDonald, et al. v. City of Chicago, et al. (District docket 08-3645).
34. Robert Channick, *Morton Grove repeals 27-year-old gun ban*, CHICAGO TRIBUNE, July 28, 2008. The ordinance had previously been upheld as a valid exercise of municipal police power, with the court finding that the Second Amendment had not been incorporated into the Fourteenth Amendment and, therefore, was inapplicable to Morton Grove. Quilici v. Village of Morton Grove, 532 F. Supp. 1169 (N.D. Ill.1981), *aff'd*, Quilici v. Village of Morton Grove, 695 F. 2d 261 (7th Cir. 1982). The Supreme Court declined to hear the appeal.
35. Press Release, District of Columbia, *Mayor Fenty, Council Unveil Firearms Legislation and Regulations* (July 14, 2008).
36. Heller v. District of Columbia, District Court Docket 08-1289. See David C. Lipscomb, *Heller, others challenge semi-automatic ban*, WASHINGTON TIMES, July 29, 2008.
37. H.R. 6691, 110th Cong. § 2(5), (6), and (7) (2008).
38. H.R. 6842, 110th Cong. (2008).
39. *Id.* at § 2, 4, 7 and 10.
40. Press Release, District of Columbia, *Mayor Fenty, Council Announce New Emergency Legislation to Amend the District's Gun Law* (Sept. 15, 2008).
41. Glenn H. Reynolds & Brannon P. Denning, Heller's *Future in the Lower Courts*, 102 NW. U. L. REV. COLLOQUY 406 (July 17, 2008).
42. 128 S.Ct. 2783, 2799, 2816 (2008).
43. *Id.* at 2816-17.
44. *Id.* at 2813 (emphasis added).
45. *Id.* at 2814.
46. *Id.* at 2814-17.
47. *Id.* at 2821.
48. *Id.* at 2817 n.27.
49. *Id.* at 2821.
50. Pending 9th Cir. (07-15763); earlier appeal at 319 F. 3d 1185 (9th Cir. 2003); order denying petition for *en banc* review, 364 F. 3d 1025 (9th Cir. 2004).
51. 319 F. 3d at 1192-93. ML

WIRELESS FACILITY SITING *continued from page 17*

(S.D.N.Y. 2000); Sprint Spectrum v. Mills, 283 F. 3d 404 (2d Cir. 2002).
57. USCOC of Greater Iowa, Inc. v. Zoning Bd. of Adjustment of the City of Des Moines, 465 F. 3d 817, 823 (8th Cir. 2006); USCOC of N.H. RSA #2, Inc. v. City of Franklin, 413 F. Supp. 2d 21, 31 (D.N.H. 2006).
58. Masterpage Commc'ns v. Town of Olive, 418 F. Supp. 2d 66, 77 (N.D.N.Y. 2005).
59. *Id.* at 81. *But see*, USCOC of Greater Missouri, LLC v. City of Ferguson, Mo., No. 4:07-CV-1489(JCH), 2007 WL 4218978, *7 (E.D. Mo. Nov. 29, 2007).
60. Rancho Palos Verdes v. Abrams, 544 U.S. 113 (2005).
61. *Id.* at 127.
62. Kay v. Ranchos Palos Verdes, 504 F. 3d 803, 815 (9th Cir. 2007).
63. Tennessee ex rel. Wireless Income Prop., LLC v. City of Chattanooga, 403 F. 3d 392, 399 (6th Cir. 2005) (citing cases).
64. Sprint PCS Assets, LLC v. City of La Canada Flintridge, 448 F. 3d 1067, 1071 (9th Cir. 2006).
65. Petition at 17-25.
66. *Id.* at 27.
67. *Id.* at 32.
68. *Id.* at 36.
69. H.R. Report No. 104-458, at 208.
70. Amherst v. Omnipoint Commc'ns Enters., Inc., 173 F. 3d 9, 17 (1st Cir. 1999). ML