

**TESTIMONY OF LARA BAKER-MORRISH**  
**COLUMBUS CITY ATTORNEY ZACH KLEIN'S OFFICE,**  
**ON SUB. HB 228**  
**BEFORE THE OHIO SENATE GOVERNMENT OVERSIGHT AND REFORM COMMITTEE**

Chair Coley, Vice-Chair Uecker, esteemed members of the Senate Government Oversight and Reform Committee, thank you for the opportunity to provide opponent testimony on Substitute House Bill 228.

My name is Lara Baker-Morrish. I am City Solicitor General for Columbus City Attorney Zach Klein's Office. I have been with the Columbus City Attorney's Office since 1993 and, prior to assuming my current position, I spent 11 years in the position of Chief Prosecutor. The City of Columbus, with a population of roughly 860,000, is the 14<sup>th</sup> largest city in the United States and the largest city in the State of Ohio. Among its other duties, the Columbus City Attorney's office prosecutes misdemeanor crimes committed in the City of Columbus and unincorporated townships – crimes which include misdemeanor domestic violence offenses of which there are roughly 4,000 filed each year. Specifically, I am here this evening to address both the proposed amendments to Ohio's local firearms preemption statute and the provisions of Stand Your Ground.

This past spring, the City of Columbus enacted local ordinances designed to fill the gap between existing federal firearms law and state law prohibitions. As an example of such a gap, in the State of Ohio an abuser who has been convicted of misdemeanor domestic violence and who may not lawfully possess a firearm under federal law faces no state law consequences for possessing a gun. Likewise, an individual who is the subject of a court order of protection for having allegedly engaged in acts of violence and who has been advised of their inability under the federal law to possess a firearm cannot be held accountable for possessing one under the state weapons under disability law. Nor can an individual who is found to have used a gun to commit a misdemeanor offense of violence be made to forfeit that weapon under state law. The City of Columbus seeks to hold those who have committed acts of violence accountable for possessing a firearm in violation of federal law. However, provisions of HB 228 which are designed to prohibit local government from passing common sense gun legislation would have a chilling effect upon the City's attempt to protect our citizens from these dangerous criminals. The amendments to ORC 9.68 were not included in HB 228 when it was introduced May 16, 2017. Rather, Substitute bill I-132-0595-7, which contains the amending language, was quietly accepted as the new working version of HB 228 on December 13, 2017 by a 7-4 vote in the House Federalism and Interstate Relations Committee. It wasn't until April 17, 2018 that these state pre-emption provisions of HB 228 were discussed openly at a public hearing.

Sub HB 228 seeks to amend ORC 9.68 in the following ways:

1. The State seeks to extend its attempt to preempt local action pertaining to firearms to include the regulation of firearms manufacturing, taxation, keeping, and reporting of loss or theft.
2. The State seeks to extend its attempt to preempt local action pertaining to firearms by

Testimony of Lara Baker-Morrish, Sub HB 228, Senate Government Oversight and Reform Committee 12/04/2018

seeking to curtail the ability of local governments to enact ordinances, regulations, and resolutions pertaining to firearms.

3. The State seeks to go even farther in its attempt to prohibit local action – amended 9.68 not only attempts to preempt local legislation, it seeks to chill the ability of local government to prosecute gun crimes or to engage in “other legal process” as pertains to firearms.
4. The State seeks to chill the work of local government and local prosecutors by creating a cause of action and defining standing to broadly encompass “a person, group, or entity adversely affected by any manner of ordinance, rule, regulation, resolution, practice, or other action enacted or enforced by a political subdivision in conflict” with the terms of 9.68 and allowing the person, group, or entity to seek damages from the city, to seek declaratory relief, injunctive relief, or a combination of these remedies to be paid by the city.
5. The State seeks to expand the reward for a successful civil action by allowing not only for the payment of costs and attorney fees but also expert witness fees and compensation for loss of income in bringing the lawsuit.
6. The State seeks to further chill any meaningful attempt by a city to seek a legal determination as to whether or not a proposed ordinance or process may be found to be in violation of ORC 9.68 by allowing for entities who sue under 9.68 to recover losses even if the city chooses to settle the lawsuit and repeal or rescind an ordinance, rule or practice prior to a final court determination.

It is the position of the City of Columbus that local government needs to be able to make decisions about how to protect its citizens in light of local problems. The problems attendant to an urban community may well be different from those encountered in a rural area and local government needs to be able to address those issues that impact their community. The possession of firearms by individuals who have been disqualified by federal law but who face no state law consequences is one such issue. The amendments to ORC 9.68 seek to chill local action by threatening local government with the payment of actual damages, attorneys’ fees, expert witness fees, and more all while allowing those who violate our existing federal gun control laws to do so with impunity.

The so-called “Stand Your Ground” provisions of HB 228 are equally problematic. In February 2015, the American Bar Association House of Delegates voted to adopt Resolution 112 opposing Stand Your Ground laws. The vote was the culmination of two years of work by the ABA National Task Force on Stand Your Ground Laws and the national investigation revealed several important findings:

1. Based on recent empirical studies, Stand Your Ground states experienced an increase in homicides.
2. Multiple states have attempted to repeal or amend Stand Your Ground laws.
3. The application of Stand Your Ground laws in unpredictable, uneven, and results in racial disparities.
4. An individual’s right to self-defense was sufficiently protected prior to Stand Your Ground laws.
5. Victim’s rights are undermined in states with statutory immunity from criminal prosecution and civil suit related to Stand Your Ground laws.<sup>1</sup>

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<sup>1</sup> ABA National Task Force on Stand Your Ground Laws, *Preliminary Report and Recommendations*, Executive Summary of Findings and Recommendations, August 8, 2014.

Based upon these findings, the ABA Taskforce recommended that for states that desire to combat violent crime, that legislatures do not enact Stand Your Ground Laws. Likewise, the ABA House of Delegates, based upon the empirical data collected by the taskforce, resolved to urge all state legislative bodies to “refrain from enacting Stand Your Ground Laws that eliminate the duty to retreat before using force in self-defense in public spaces...”<sup>2</sup> I bring these findings and this resolution to your attention by way of emphasizing that the ABA is a neutral arbiter who took a look not at the politics of these questions but at the data – the facts, the research. The ABA, consisting of practitioners from all sides of the criminal justice system and with members from across the political spectrum, have taken the step of resolving to oppose these laws – I believe this fact should give serious pause to the legislature when considering such questionable legislation.

Stand Your Ground Laws are of particular concern in the effort to combat domestic violence. It is the nature of domestic abuse that the abuser exerts a considerable amount of emotional and physical control over their victims. As a result, it is common for victims of domestic violence to fear the criminal justice system, leaving primarily municipal prosecutors in the position of seeking to hold abusers accountable without the cooperation of the victim. Often times, the most advantageous opportunity for successful prosecution occurs when the violence takes place outside of the home and the state can defeat spurious self-defense claims by the abuser by highlighting the duty to retreat. The addition of Stand Your Ground, eliminating that duty, allows for the abuser to simply claim that their injuries were the result of self-defense and without the testimony of the now uncooperative and abused victim; the prosecution will be left with no recourse.

Stand Your Ground Laws likewise impact the enforcement of the misdemeanor Aggravated Menacing statute. Looking to the situation that occurred in Florida this past summer where a fight broke out over a handicap parking space: if two people are arguing and one pulls out a gun and threatens to shoot the other person (but does not) under current Ohio law this could potentially violate the Aggravated Menacing statute as a mere argument would not justify that type of escalation. Under the Stand Your Ground Law, however, if the person pulling the gun “reasonably believed” that pulling it was necessary to prevent a risk to their safety, the State’s ability to pursue Aggravated Menacing charges would be greatly reduced and, as a result, you will see an increase in these situations. I see a world where long-standing neighbor disputes lead to both sides pulling a gun any time they see each other because “I know he wants to kill me and I fear for my life whenever I see him so I have to pull out my gun.” Those of us that have prosecuted these offenses have seen enough of these situations to know where the use of deadly force without a duty to retreat will end.

In conclusion, I strongly urge this Committee to strike the language of HB 228 pertaining to amendments to ORC 9.68 and to consider the need of local governments to address local concerns. Further, I respectfully ask for the removal of the Stand Your Ground provisions as they are a threat to public safety. I would be happy to answer any questions you might have.

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<sup>2</sup> ABA House of Delegates, Resolution 112, February 2015.