Analysis: Ohio's Magazine Capacity Limit
by Sean Maloney (As published by the Buckeye Firearms Association.)

Buckeye Firearms Association was once again asked, "What is the magazine capacity limit pertaining to firearms in the State of Ohio?"

This question was fueled by the unconstitutional ordinance that is still on the books in Cincinnati, Ohio, which caused a national retailer of firearms magazines to refuse to ship legally purchased magazines to a customer in Cincinnati.

So that there is no confusion related to Ohio law on the subject of "magazine capacity," I have provided the following analysis.

The relevant portion of the City of Cincinnati Ordinance provides:

Sec. 708-37. - Possession or Sale of Semiautomatic Firearms Prohibited.
(a) No person shall sell, deliver, rent, lease, offer, or display for sale, or transfer ownership of, acquire or possess a semiautomatic firearm.

(b) No person shall sell, deliver, rent, lease, offer or display for sale, or transfer ownership of, acquire or possess any detachable magazine with the following capacities:
   (1) More than ten rifle or carbine rounds;
   (2) More than five shotgun rounds;
   (3) More than 15 handgun rounds...."


The controlling law on magazine capacity, Ohio Revised Code §2923.11(E), Weapons control definitions provides:

"'Automatic firearm' means any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. 'Automatic firearm' also means any semi-automatic firearm designed or specially adapted to fire more than thirty-one cartridges without reloading, other than a firearm chambering only .22 caliber short, long, or long-rifle cartridges." Id.

Accordingly, the maximum legal magazine capacity "everywhere" in the State of Ohio is thirty (30). A thirty round magazine, plus one in the chamber of the firearm, will legally limit the semi-automatic firearm to fire a maximum of "thirty-one" cartridges.

(Note: It is not illegal to own or possess magazines with capacity greater than 30 rounds; so long as they are kept separate and apart from a firearm designed to accept it. The magazine only violates Ohio law once the magazine is inserted into the firearm, "adapting" the firearm to fire more than thirty-one cartridges without reloading.)

On March 14, 2007, the Ohio Legislature, recognizing that absent a uniform law throughout the state, law-abiding gun owners would face a confusing patchwork of licensing requirements, possession restrictions, and criminal penalties as they travel from one jurisdiction to another, enacted Ohio Revised Code § 9.68. Right to bear arms - challenge to law, also known as Ohio's "preemption law." See Cleveland v. State, 128 Ohio St. 3d 135, 146.

The Constitutionality of ORC §9.68 is well settled and has been upheld by the Ohio Supreme Court in Ohioans for Concealed Carry, Inc. v. Clyde, 120 Ohio St.3d 96, (2008); as well as, most recently in Cleveland v. State, 128 Ohio St.3d135, (2010).
Application of O.R.C. § 9.68(A) renders the City of Cincinnati ordinance and any other ordinance or statute enacted in Ohio contrary to Ohio Revised Code §2923.11(E) unconstitutional.

Sean Maloney is a Buckeye Firearms Association Region Leader, a Second Amendment Rights attorney in West Chester, OH, an NRA Benefactor Life Member, NRA Election Volunteer Coordinator for Ohio's 8th Congressional District, an active NRA Instructor, serves on the "Grassroots Development" committee of the National Rifle Association and received the NRA's 2011 "Jay M. Littlefield Volunteer of the Year Award."