

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue, 4th Floor
Denver, Colorado 80203
(303) 861-1111

District Court, City and County of Denver
Honorable Joseph E. Meyer III, Judge
District Court Case No. 03 CV 3809

Defendants/Appellants:

STATE OF COLORADO and BILL OWENS, in his
official capacity as Governor of the State of Colorado,

v.

Plaintiffs/Appellees:

CITY AND COUNTY OF DENVER, a home rule
municipal corporation of the State of Colorado; and
JOHN W. HICKENLOOPER, as Mayor of the City and
County of Denver

▲ COURT USE ONLY ▲

Attorneys for *Amicus Curiae*
the COLORADO MUNICIPAL LEAGUE:

ERIN E. GOFF, #31072
GEOFFREY T. WILSON, #11574
1144 Sherman Street
Denver, Colorado 80203
Phone: (303) 831-6411
Fax: (303) 860-8175
Email: egoff@cml.org

Case Number: 04 SA 396

BRIEF OF AMICUS CURIAE THE COLORADO MUNICIPAL LEAGUE

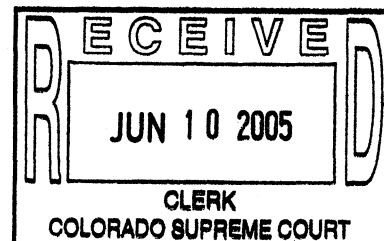


TABLE OF CONTENTS

Table of Authorities	ii, iii
Interests of the League	2
Issues Presented for Review	2
Statement of the Case.....	3
Summary of Argument	3
Argument	4
(A) A traditional home rule analysis dictates a ruling to preserve Denver’s firearms regulations	4
(1) Uniformity.....	7
(2) Extraterritorial Impact.....	10
(3) Traditionally governed by state or local government	11
(4) Constitutional allocation of authority	13
(5) Legislative Declarations.....	14
(B) Public Policy supports the preservation of home rule authority to regulate firearms in the manner at issue in this case.....	15
Conclusion	16
Appendix 1 – Listing of Home Rule Municipalities with Firearm Regulations	
Certificate of Mailing	

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<u>City and County of Denver v. Qwest</u> , 18 P.3d 748 (Colo. 2001)	6
<u>City of Northglenn v. Ibarra</u> , 62, .3d, 151 (Colo. 2003)	5,6,7,10,14,16
<u>City of Commerce City v. State of Colorado</u> , 40 P.3d 1273 (Colo. 2002)	6,7,14
<u>Denver v. State</u> , 788, P.2d 764 (Colo. 1990)	5,6,7,10,11,13,14,16
<u>Four County Metro. Capital Improvement Dist. V. Board of County Commissioners</u> , 149 Colo, 284, 295; 369 P.2d 67 (Colo. 1962)	13
<u>Fraternal Order of Police, Colorado Lodge No. 27 v. City and County of Denver</u> , 926 P.2d 582 (Colo. 1996)	6,7,14
<u>Robertson v. City and County of Denver</u> , 874 P.2d 325 (Colo. 1994)	11
<u>Town of Telluride v. Lot Thirty-Four Venture, L.L.C.</u> , 3 P.3d 30, 37 (Colo. 2000)	6,7,10,14
<u>Voss v. Lundvall Bros. Inc.</u> , 830 P.2d 1061 (Colo. 1992)	6
<u>Winslow Const. Co. v. City and County of Denver</u> , 960 P.2d 685 (Colo. 1998)	6,14
 <u>STATUTES AND CONSTITUTIONAL PROVISIONS</u>	
Colo. Const. Art. XX	4,7,13,14
Colo. Const. Art. XX Sec. 6	4
Senate Bill 03-24	2,3,4,7,14,5,16
Senate Bill 03-25	2,3,4,7,14,5,16

OTHER AUTHORITIES

2004-2005 Colorado Municipal and County Directory and Desk Reference, 2004 Colo. Mun. League 109

Arvada, Colo., Code §21-38 (1981).....12

Aurora, Colo., Code §94-154 (1996).....12

Boulder, Colo., Code §5-8-4 (1981).....12

Boulder, Colo., Code §5-8-15 (1981)12

Brighton, Colo., Code §9-8-90 (1999).....12

Brighton, Colo., Code §9-32-40 (1999).....12

Burlington, Colo., Code §9.16 (1997)9

Manitou Springs, Colo., Code §9.52.020 (2002).....12

Thornton, Colo., Code §38-241 (1996)12

Colorado Bureau of Investigation 2003, *Crime in Colorado 2003* (visited June 7, 2005) <http://cbi.state.co.us/dr/cic2k3/agencylist.asp>.....8

Colorado Springs Gazette and El Paso County News, Vol. 1 No. 52, December 27, 1873 at 3.....12

Colorado State Archives History FAQs (visited on June 7, 2005) <http://www.colorado.gov/dpa/doit/archives/history/histfaqs.htm>.....12

Compiled Laws of Colo. Ch. CXVII (1921).....12

Colo. Sess. Laws 2003, Ch. 44 at 635-36; Ch. 45 at 652-5314

Denver City Clerk Wayne E. Vaden Aff., R. Vol. 1, pp. 224-22611

Denver: The Rocky Mountain Metropolis History (visited June 7, 2005) http://www.denvergov.org/AboutDenver/history_timeline_short.asp.....11

COMES NOW the Colorado Municipal League (“League”) by its undersigned attorney and, pursuant to Rule 29, C.A.R., submits this brief as *amicus curiae* in support of the position of Appellee, City and County of Denver (“Denver”).

INTERESTS OF THE LEAGUE

The Colorado Municipal League is a non-profit, voluntary association of 265 of the 271 municipalities located throughout the state of Colorado (comprising 97.79 percent of the total incorporated state population), including all 91 home rule municipalities, 174 of the 180 statutory municipalities, all municipalities greater than 2,000 in population, and the vast majority of those having a population of 2,000 or less. The League has been appearing as an amicus before the Colorado Court of Appeals and the Colorado Supreme Court for decades in appeals where a significant decision affecting Colorado municipalities is possible.

The League as an *amicus* will provide the Court with a statewide municipal perspective on the issues presented in this case, and would assure that the general interest of the great majority of those other member municipalities is represented. League members, particularly home rule municipalities, have a great deal at stake in the proper resolution of this matter.

ISSUES PRESENTED FOR REVIEW

The League hereby adopts and fully incorporates by reference the statement of the issues presented for review on appeal and the statement of the issues presented for review on cross-appeal in the Opening-Answer brief of Denver. Within the context of these issues, the League believes the following question is particularly relevant:

Are those of Denver’s firearms regulations (if any) that are determined by this Court as a matter of statutory construction to be impacted by Senate Bill 03-24 and Senate Bill 03-25, a matter of local concern such that they are not preempted by Senate Bill 03-24 and Senate Bill 03-25?

STATEMENT OF THE CASE

The League adopts and incorporates by reference the statement of the case as stated in the Opening-Answer Brief of Denver.

SUMMARY OF ARGUMENT

The League adopts and incorporates by reference the Argument as stated in the Opening-Answer Brief of Denver, and adds the following.

As a matter of statutory construction, certain of Denver's firearms ordinances are unaffected by Senate Bill 03-24 and Senate Bill 03-25. Those ordinances that are determined by the Court to be affected by these bills regulate matters of strictly local concern and are therefore not preempted by the state's regulation.

Under the Colorado Constitution, power is divided between home rule municipalities and the state into the following three relevant categories: 1) areas of local and municipal concern - areas in which the interest of the home rule municipality predominates and the local enactment supersedes any conflicting state statute; 2) areas of statewide concern - areas in which a home rule municipality may legislate, if at all, only by express delegation from the General Assembly; and 3) areas of mixed state and local concern - areas in which both the state and the home rule municipality may legislate, but in which the state interest predominates so that a state enactment overrides any conflicting municipal enactment. A systematic analysis of the issue, involving the considerations announced by this Court for determining whether a matter is of local, statewide or mixed state and local concern, reveals that Denver's firearms regulations at issue in this case are purely a matter of local concern.

ARGUMENT

For the reasons set forth in Denver's Opening-Answer brief, the League urges the Court to evaluate each of Denver's ordinances individually to determine whether, as a matter of statutory construction, they are affected by Senate Bill 03-24 or Senate Bill 03-25. This brief will focus primarily on long-standing home-rule principals as applied to those of Denver's firearms ordinances that remain at issue after such determination has been made.

A. A traditional home rule analysis dictates a ruling to preserve Denver's firearms regulations.

In general, municipal home rule is based upon the theory that the citizens of a municipality should have the right to decide how their local government is to be organized and how their local problems should be solved. The citizens of Colorado expressly recognized this in 1902 when they adopted Article XX of the Colorado Constitution.¹ Home rule cities are granted plenary authority by the Colorado Constitution to regulate issues of local concern. See Colo. Const., Art. XX, Sec. 6.

¹ Colorado citizens overwhelmingly approved Article XX as an amendment to the Colorado Constitution in 1902. Article XX consolidated the city and the county of Denver into one entity, granted the new entity the right to adopt a home rule charter, and provided in Section 6 for the adoption of home rule charters by certain other Colorado cities. In the decade following 1902, however, the Colorado courts took a restrictive view of the home rule powers granted in Article XX. In 1912, Section 6 of Article XX was substantially amended to provide a broader statement of home rule powers and to extend the right of home rule to any Colorado city or town having a population of in excess of 2,000. In 1970, as part of an overall effort to modernize local government, Article XX was again amended by the addition of a new Section 9. In general, Section 9 permitted any municipality, regardless of size, to adopt a home rule charter; permitted the adoption of a home rule charter at the time of incorporation; and required the legislature to establish procedures for adopting, amending, and repealing charters for existing and prospective home rule municipalities. Source: Home Rule Handbook: An Introduction to the Establishment and Exercise of Home Rule, 1999, Colorado Municipal League.

Under the Colorado Constitution, power is divided between home rule municipalities and the state into the following three relevant categories: 1) areas of local and municipal concern - areas in which the interest of the home rule municipality predominates and the local enactment supersedes any conflicting state statute; 2) areas of statewide concern – areas in which a home rule municipality may legislate, if at all, only by express delegation from the General Assembly; and 3) areas of mixed state and local concern – areas in which both the state and the home rule municipality may legislate, but in which the state interest predominates so that a state enactment overrides any conflicting municipal enactment. A systematic analysis of the firearms regulations at issue in this case, involving the considerations announced by this Court for determining whether a matter is of local, statewide or mixed state and local concern, reveals that Denver’s firearms regulations are purely a matter of local concern. Freeing home rule cities from meddling by the General Assembly in the minutia of local affairs was the principal reason the home rule provisions were added to the Colorado Constitution.

While this Court has found the terms “local,” “state,” and “mixed” useful to resolve potential conflicts between state and local governments, these terms “are not mutually exclusive or factually perfect descriptions of the relevant interests of the state and local governments.” City of Northglenn v. Ibarra, 62 P.3d 151, 155 (Colo. 2003), quoting Denver v. State, 788 P.2d 764, 767 (Colo. 1990). The Court has not developed a specific test that dictates the process of analyzing whether a matter is of local, state or mixed concern. Ibarra, 62 P.3d at 155. Instead the determination is made on an *ad hoc* basis, considering the totality of the circumstances. Id. The Court emphasized that determinations of how to characterize a given matter are made on such an *ad hoc* basis, taking into account “the relative interests of the state and the home rule

municipality in regulating the matter at issue in a particular case.” Denver, 62 P.3d at 768. The

Court also pointed out that issues often do not fit neatly into one category or another:

Those affairs which are municipal, mixed or statewide concern often imperceptibly merge. [citation omitted.] To state that a matter is of local concern is to draw a legal conclusion based on all facts and circumstances presented by a case. In fact, there may exist a relatively minor state interest in the matter at issue but we characterize the matter as local to express our conclusion that, in the context of our constitutional scheme, the local regulation must prevail. Thus, even though the state may be able to suggest a plausible interest in regulating the matter to the exclusion of a home rule municipality, such an interest may be insufficient to characterize the matter as being even of “mixed” state and local concern.

Id. at 767.

In its Denver v. State opinion, this Court originally identified four considerations in determining whether a matter is of statewide, local or mixed concern. These four factors have been applied since Denver v. State in several major cases involving conflicts between state statutes and home rule municipal ordinances, See Fraternal Order of Police v. City and County of Denver, 926 P.2d 582, 588 (Colo. 1996); Winslow Const. Co. v. City and County of Denver, 960 P.2d 685, 693 (Colo. 1998); Town of Telluride v. Lot Thirty-Four Venture, L.L.C., 3 P.3d 30, 37 (Colo. 2000); City and County of Denver v. Qwest, 18 P.3d 748, 754-755 (Colo. 2001); Commerce City v. State of Colorado, 40 P.3d 1273, 1279 (Colo. 2002); and Ibarra, 62 P.3d at 156, and have been summarized as follows: “[1] Whether there is a need for statewide uniformity of regulation; [2] whether the municipal regulation has an extraterritorial impact; [3] whether the subject matter is one traditionally governed by state or local government; and [4] whether the Colorado Constitution specifically commits the particular matter to state or local regulation.” Voss v. Lundvall Bros. Inc., 830 P.2d 1061, 1067 (Colo. 1992).

The Court has at times weighed other factors in its consideration of whether a subject matter is of local, state or mixed state and local concern, including any legislative declaration as to whether a matter is of statewide concern. Ibarra, 62 P.3d at 156. See also, Commerce City 40 P.3d at 1280; Telluride, 3 P.3d at 37.

The following analysis of the four factors identified in Denver v. State and the additional factor of legislative declaration considered by the Court in Telluride, Commerce City and Ibarra, as applied to the issue at bar, confirms that the type of regulation covered by Denver's firearms ordinances at issue in this case is a matter of "local and municipal" concern under Article XX of the Colorado Constitution and should not be preempted by Senate Bill 03-24 or Senate Bill 03-25.

(1) Uniformity

As the Court declared in its Fraternal Order of Police decision, "[u]niformity in itself is no virtue, and a municipality is entitled to shape its law as it sees fit if there is no *discernable pervading state interest* involved." Fraternal Order of Police, 926 P.2d at 589-90 (emphasis in original). An important question in this appeal is whether there is such a discernable, pervasive state interest in uniform regulation of firearms to justify state preemption of Denver's regulations. The League believes there is not. Under the uniformity analysis, the Court also has found public expectation of consistency to be an important factor to consider in determining whether a matter is of statewide concern. Telluride, 3 P.3d at 38. In Telluride, the Supreme Court found that landlord-tenant relations is an area in which state residents have an expectation of consistency throughout the state. Telluride 3 P.3d at 38. There should be no such expectation of consistency in the case at bar.

In its Opening Brief, the State asserts that the variety in local firearms regulation creates “uncertainty and the chilled exercise of firearm rights” and a “confusing patchwork of laws”. State’s Opening Brief at 17. The League asserts that the State’s concerns do not rise to the level of a discernable, pervasive state interest in uniform regulation of firearms and that residents of the state do not have a reasonable expectation of consistency in firearms regulation throughout the state.

Admittedly, but without apology, there is somewhat of a “patchwork” of firearms regulation throughout the state. Colorado is a very diverse state geographically, economically and socially, ranging from the large, populous, metropolitan city of Denver, to “college towns” such as Boulder and Ft. Collins; from ski towns like Vail and Aspen to mountain towns like Ridgway to the farming communities all across Colorado such as Holyoke in the eastern plains, and Monte Vista the San Luis Valley (all home rule municipalities ranging in population from 560,882 to 754). Denver, for example, has a much higher incidence of violent crime and gun-related crime than do college towns, ski-towns, farming communities or mountain towns and has a heightened interest in providing regulations that protect the health, safety and welfare of its citizens and visitors. By way of example the following table shows firearm related crime statistics provided to the Colorado Bureau of Investigation in 2003 by the police departments in the respective municipalities listed above:²

² *Crime In Colorado 2003* (visited June 7, 2005)
<<http://cbi.state.co.us/dr/cic2k3/agencylist.asp>>.

	Population³	Assault with a firearm	Robbery with a firearm	Murder/ Manslaughter
Denver	560,882	239	317	63
Ft. Collins	124,428	37	7	1
Boulder	93,752	17	10	0
Aspen	6,439	0	0	0
Vail	4,832	0	0	0
Ridgway⁴	754	--	--	--
Holyoke	2,271	0	0	0
Monte Vista	4,542	0	0	0

To that end, Denver has enacted firearms regulations that: (a) prohibit the open carrying of firearms in public; (b) prohibit the possession of firearms in city parks and recreation facilities (including persons carrying a concealed weapons permit); (c) restrict the sale of assault weapons within the city; (d) require the safe storage of firearms; (e) restrict the carrying of firearms in vehicles engaged purely in travel within the city; (f) require that firearms that are legally carried in vehicles be unloaded; and (g) prohibit the provision of firearms to minors. Activity in smaller municipalities generally does not give rise to a need for these kinds of regulations. However, different firearms regulations may be called for in other areas of the state. Burlington, for example, a home-rule municipality on the eastern plains with a population of 3,699, allows shooting of firearms within the city limits under certain circumstances, because they have a bit of a bird-roosting problem in town. See Burlington, Colo., Code § 9.16 (1997). Rural mountain towns are less likely to have violent gun crimes but more likely to have dangerous wildlife roaming about – creating a need to allow open carry that simply does not exist in Denver.

³ 2004-2005 Colorado Municipal and County Directory and Desk Reference, 2004 Colo. Mun. League 10. (population estimates in the above referenced publication obtained from the State of Colorado, Department of Local Affairs).

⁴ Crime statistics were not received by the Colorado Bureau of Investigation for this jurisdiction.

Denver's firearms ordinances are local regulations, designed to meet local conditions. Whether and to what extent they are effective at accomplishing their objectives will be felt locally. The regulations are intended to minimize potential injury or death to citizens of and visitors to the City caused by firearms. These concerns certainly supersede any "expectation" a gun owner may have for consistency in firearms regulation throughout the state. Clearly, there is no overriding, pervasive state interest in a uniform prohibition on home rule municipalities such as Denver trying to provide for the health safety and welfare of its citizens and others within the physical boundaries of its jurisdiction.

(2) Extraterritorial Impact

As articulated by the Court in Denver v. State, the second consideration concerning whether a matter should be classified as of local, statewide or mixed state and local concern is "the impact of the municipal regulation on persons living outside the municipal limits." Denver v. State, 788 P.2d at 768. The Supreme Court has defined "extraterritorial impact" as a ripple effect that impacts state residents outside the municipality. Telluride, 3 P.3d at 38-39. To find a ripple effect the extraterritorial impact must have serious consequences to residents outside the municipality, and be more than incidental or *de minimus*. Ibarra, 62 P.3d at 161; Denver v. State, 788 P.2d at 769.

Residents outside of the municipality may be mildly annoyed by Denver's firearms regulations but their annoyance certainly does not rise to the level of a serious consequence. The State in its Opening Brief asserts that the "burden of discovering the laws in the various jurisdictions may discourage citizens from exercising their constitutional-right to bear arms." State's Opening Brief at 18-19. However, as this Court aptly pointed out in its decision in

Robertson v. Denver, the right to bear arms is not absolute, and a city or state may regulate the exercise of the right under its police power so long as the exercise of that power is reasonable. Robertson v. City and County of Denver, 874 P.2d 325, 329 (Colo. 1994). Denver's exercise of its power to adopt the firearms regulations at issue in this case is reasonable for the reasons described above (see Argument, supra p. 6). Discovering the firearms regulation of various jurisdictions prior to traveling to or through such jurisdictions has no more than an incidental affect on residents of the state and does not rise to the level of an extraterritorial impact.

(3) Traditionally governed by state or local government

The third prong of the Denver v. State analysis involves "historical considerations, i.e., whether a particular matter is one traditionally governed by state or by local government." Denver v. State, 788 P.2d at 768. The use and possession of firearms traditionally has been regulated at the local level since before the state of Colorado even became a state. Denver, established by a party of prospectors on November 22, 1858,⁵ first prohibited the discharge of guns within the city limits in 1865, near the conclusion of the American Civil War, and adopted its first law prohibiting the carrying of concealed weapons within the city in 1868. Denver City Clerk Wayne E. Vaden Aff., R. Vol. 1, pp. 224 - 226. Congress established the Colorado Territory in 1861, but Colorado did not officially become a state until August 1, 1876, eighteen

⁵ *Denver: The Rocky Mountain Metropolis History* (visited June 7, 2005) <http://www.denvergov.org/AboutDenver/history_timeline_short.asp>.

years after Denver enacted its first firearms regulation.⁶ The Colorado General Assembly apparently began regulating firearms in or around 1921, a full fifty-five years after Denver. See Compiled Laws of Colo. Ch. CXVII (1921). Denver is not the only municipality with over 125 years of firearms regulations under its belt. The first written reference to concealed weapons being unlawful in Colorado Springs was effective December 29, 1873. *Colorado Springs Gazette and El Paso County News*, Vol. 1 No. 52, December 27, 1873 at 3.

A recent League survey of 84 of the 91 home rule municipalities in the state revealed that 81 of the 84 regulate firearms in some fashion. See Appendix A. A number of these municipalities have enacted some firearms regulations similar to those enacted by Denver. By way of example, following are some home rule municipalities, in addition to Denver, that prohibit possession of firearms in municipal parks: Boulder, Thornton, Manitou Springs, Arvada, and Brighton.⁷ Additionally, a number of municipalities prohibit the carrying of concealed weapons into municipal offices or meeting places of municipal officials, or from council chambers while in session. Included among the municipalities with this type of ordinance on the books are: Aurora, Boulder, Thornton, Brighton and Manitou Springs.⁸ Clearly, a decision by this Court in favor of state preemption of Denver's ordinances would not

⁶ Colorado State Archives History FAQs (visited on June 7, 2005) <<http://www.colorado.gov/dpa/doit/archives/history/histfaqs.htm>>.

⁷ Boulder, Colo., Code § 5-8-4 (1981), Thornton, Colo., Code § 38-241 (1996), Manitou Springs, Colo., Code § 9.52.020 (2002), Arvada, Colo., Code § 21-38 (1981), Brighton, Colo., Code § 9-8-90 (1999).

⁸ Aurora, Colo., Code § 94-154 (1996), Boulder, Colo., Code § 5-8-15 (1981), Thornton, Colo., Code § 38-241 (1996), Brighton, Colo., Code § 9-32-40 (1999), Manitou Springs, Colo., Code § 9.52.020 (2002).

only affect Denver, but would adversely impact municipalities around the state, as this is an area traditionally and appropriately regulated at the local level.

(4) Constitutional allocation of authority

The last of the Denver v. State factors is whether “the Colorado Constitution specifically commits a particular matter to state or local regulation.” Denver v. State, 788 P.2d at 768. The Colorado Constitution does not commit firearm regulation to either the state or local governments. That acknowledged, it is nonetheless worth noting here what the Supreme Court said in Four County Metro. Capital Improvement Dist. v. Board of County Commissioners: “In numerous opinions handed down by this Court extending over a period of fifty years, it has been made perfectly clear that when the people adopted Article XX they conferred *every power* theretofore possessed by the legislature to authorized municipalities to function in local and municipal affairs.” Four County Metro, 149 Colo. 284, 295; 369 P.2d 67, 72 (Colo. 1962) (emphasis in original).

The Denver v. State criteria evidence considerable deference to this plenary authority of home rule municipalities. Preemption of home rule authority is not favored. There must be more than simply a state interest in uniformity of regulation to overcome a home rule ordinance; there must be a “discernable pervading state interest” in uniformity (see Argument supra pp. 6-9). For a state interest to justify overriding a home rule ordinance, the regulation must have more than a contingent speculative or *de minimus* extraterritorial impact; the extraterritorial impact must have “*serious*” consequences (see Argument supra pp. 9-10).

This deference is especially appropriate where, as here, the challenged local regulation affects a local issue traditionally within the regulatory domain of local government, i.e.,

regulation of firearms, that the local government regulates for the purpose of maintaining the health, safety and welfare of its citizens and visitors.

(5) Legislative Declarations

A fifth factor considered by this Court in evaluating state and local interests is any legislative declaration as to whether a matter is of statewide concern. Ibarra, 62 P.3d at 162. See also, Commerce City, 40 P.3d at 1281; Telluride, 3 P.3d at 37. Senate Bill 03-24 and Senate Bill 03-25 contain various declarations of statewide concern vis a vis the regulation of firearms. See Colo. Sess. Laws 2003, Ch. 44 at 635-36 and Ch. 45 at 652-53. This Court has said that such declarations are not dispositive, but are entitled to “some deference.” Telluride, 3 P.3d at 37.

This Court has recognized that the constitutional authority of home rule municipalities would not be protected from General Assembly usurpation if the legislature could “end-run” Article XX of the Colorado Constitution by the simple expedient of inserting declarations of “statewide concern” into its acts. For this reason, this Court has stated repeatedly that it is not bound by such declarations. See, e.g., Denver v. State, 788 P.2d at 768 n.6; Winslow Construction, 960 P.2d at 694.

As this Court has observed, “the overall effect of the [home rule] amendment [Colo. Const. Art. XX] was to grant to home rule municipalities the power the legislature previously had and to limit the authority of the legislature with a respect to local and municipal affairs in home rule cities.” Fraternal Order of Police, 926 P.2d at 587. Furthermore, the General Assembly may not “reinvest itself with any portion of the authority it lost to home rule cities upon adoption of Article XX by the people.” Four County Metro, 149 Colo. at 295, 369 P.2d at 72.

This appeal raises significant issues concerning the appropriate division of authority under the Colorado Constitution between home rule municipalities and the General Assembly in the area of firearms regulation. If critical constitutional prerogatives of home rule municipalities can be extinguished based solely upon statements by legislators and others who testify in favor of such preemptive legislation, there will shortly be little left of home rule in Colorado.

B. Public Policy supports the preservation of home rule authority to regulate firearms in the manner at issue in this case.

The citizens of at least 81 Colorado home rule municipalities have seen fit to regulate firearms. See Appendix A. These 81 municipalities range from a population of 560,882 to one of 116; from urban Denver to college towns and ski towns, farming towns to small mountain towns.

In at least these 83 municipalities, the citizens have recognized that such matters, on which the municipal governing body has legislated by ordinance, are vital to preserving the health, safety and welfare of the citizens and visitors of the municipality. Prohibiting municipalities from exercising such power to regulation firearms would not only prevent Denver from achieving this goal, but would prevent a number of additional municipalities throughout the state from regulating firearms as they deem necessary to protect the citizens in their respective municipalities. Even those municipalities that do not currently regulate firearms, or regulate in a manner not potentially preempted by Senate Bill 03-24 or Senate Bill 03-25, would be prohibited from future regulation should the environment, as it relates to firearms, change in the future.

CONCLUSION

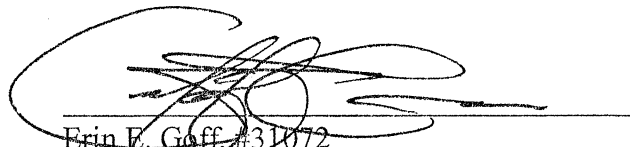
The League respectfully urges that a Denver v. State analysis (including the additional factor regarding legislative declaration considered by the Supreme Court in Ibarra) leads to the conclusion that Denver's firearms ordinances at issue in this case involve a matter of local concern and thus supersede Senate Bill 03-24 and Senate Bill 03-25.

There is no discernable, pervading state interest in a uniform prohibition of ordinances such as Denver's. The extraterritorial impacts of the ordinance are weak and unreasonable, at best; they certainly are not significant. Firearms have traditionally been regulated at the local level, where local interests are strong. There is no specific constitutional authority for regulating firearms, either on the state or local level; however, the state constitution confers plenary authority to home rule municipalities. Finally, this Court is certainly not bound by the General Assembly's naked assertion that this is a matter of statewide concern.

WHEREFORE, for all of the reasons set forth above, the League respectfully requests that the decision of the trial court be affirmed in part and reversed in part and that Denver's ordinances be found not to be preempted by Senate Bill 05-24 and 05-25.

Respectfully submitted this 10th day of June, 2005.

COLORADO MUNICIPAL LEAGUE



Erin E. Goff, #31072
Geoffrey T. Wilson, #11574
Colorado Municipal League
1144 Sherman Street
Denver, Colorado 80203
303.831.6411

Appendix A

Listing of Home Rule Municipalities
With Firearm Regulations

Appendix A

<u>HOME RULE MUNICIPALITY</u>	<u>MUNICIPAL CODE SECTION REGULATING FIREARMS</u>
Alamosa	Alamosa, Colo., Code art. VII, § 11-116 -- 11-130 (1988)
Arvada	Arvada, Colo., Code § 21-21 (1981)
Aspen	Aspen, Colo., Code § 15.04.170 (1971)
Aurora	Aurora, Colo., Code § 94-141 -- 94-154 (1996)
Avon	Avon, Colo., Code § 9.04.080 - 9.28.010 (2004)
Basalt	Basalt, Colo., Code ch. 10, art. IV, § 10-61 -- 10-62 (1991)
Black Hawk	Black Hawk, Colo., Code § 10-161 -- 10-169 (2002)
Boulder	Boulder, Colo., Code § 5-8-1 -- 5-8-27 (1981)
Breckenridge	Breckenridge, Colo., Code ch. 3, art. E, § 6-3E-1 -- 6-3E-11 (1984)
Brighton	Brighton, Colo., Code § 9-32-10 -- 9-32-60 (1999)
Broomfield	Broomfield, Colo., Code § 9-72-010 -- 9-72-140 (2005)
Burlington	Burlington, Colo., Code § 9.16.010 - 9.16.020 (1997)
Canon City	Canon City, Colo., Code § 9.52.010 - 9.52.020 (1988)
Castle Rock	Castle Rock, Colo., Code § 9.04.160 - 9.04.170 (1983)
Central City	Central City, Colo., Code § 96-01 (1996)
Cherry Hills Village	Cherry Hills Village, Colo., Code § 10-8-10 -- 10-8-60 (2003)
Colorado Springs	Colorado Springs, Colo., Code § 9.7.101 - 9.7.107 (2004)
Commerce City	Commerce City, Colo., Code § 14-111 -- 14-118 (2003)
Craig	Craig, Colo., Code § 9.68.010 - 9.68.120 (2002)
Crested Butte	Crested Butte, Colo., Code § 9-6-1 -- 9-6-4 (1987)
Dacono	Dacono, Colo., Code art. 5, § 10-84 (1994)
Delta	Delta, Colo., Code § 9-04-100 (2004)
Denver	Delta, Colo., Code § 38-116 -- 38-131 (1982)
Dillon	Dillon, Colo., Code § 10-7-10 -- 10-7-50 (2002)
Durango	Durango, Colo., Code art. VIII, § 17-116 -- 17-130 (2003)
Edgewater	Edgewater, Colo., Code § 15.151 - 15.155 (1992)

Englewood	Englewood , Colo., Code § 7-6C-0 -- 7-6C6 (2000)
Evans	Evans , Colo., Code § 9.32 (1998)
Federal Heights	Federal Heights, Colo., Code § 6-6-1 -- 6-6-10 (1993)
Fort Collins	Ft. Collins , Colo., Code § 17-101 (1986)
Fort Morgan	Ft. Collins , Colo., Code § 20-10 -- 20-11 (1994)
Fountain	Fountain, Colo., Code § 9.36.030 (1980)
Frisco	Frisco, Colo., Code § 127-4 (1989)
Fruita	Fruita, Colo., Code § 9.05 (1976)
Glendale	Glendale, Colo., Code § 10-135 -- 10-142 (1972)
Glenwood Springs	Fruita, Colo., Code § 120.030.010 - 120.030.031 (1971)
Golden	Golden, Colo., Code § 8.04.920 - 8.04.990 (2005)
Grand Junction	Grand Junction, Colo., Code § 24.5 (2004)
Greeley	Greeley, Colo., Code § 10.36.010 - 10.36.040 (1994)
Greenwood Village	Greenwood Village, Colo., Code § 9.20.010 - 9.20.120 (2003)
Gunnison	Gunnison, Colo., Code § 5-1-26 (2000)
Gypsum	Gypsum, Colo., Code § 9.05.30 (1985)
La Junta	La Junta, Colo., Code § 9.08.330 - 9.08.394 (1982)
Lafayette	Lafayette, Colo., Code § 75-46 -- 75-56 (1981)
Lakewood	Lakewood, Colo., Code § 9.70.010 - 9.70.080 (1995)
Lamar	Lamar, Colo., Code § 10-8-10 -- 10-8-50 (2000)
Littleton	Littleton, Colo., Code § 6-7-1 -- 6-7-9 (2004)
Lone Tree	Lone Tree, Colo., Code § 10-3-10 (2004)
Longmont	Longmont, Colo., Code § 10.28.010 - 10.28.090 (2004)
Louisville	Longmont, Colo., Code § 9.82.010 - 9.82.070 (1999)
Loveland	Loveland, Colo., Code § 9.60.020 - 9.60.030 (1974)
Manitou Springs	Manitou Springs, Colo., Code § 9.52.010 - 9.52.080 (2002)
Minturn	Minturn, Colo., Code § 9.48.010 - 9.48.080 (1977)
Monte Vista	Monte Vista, Colo., Code § 11-236 -- 11-242 (1992)
Montrose	Montrose, Colo., Code § 6-1-13 (2000)
Morrison	Morrison, Colo., Code § 7-3-3a7 (1996)

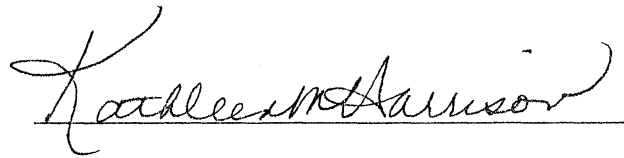
Mountain Village	Mountain Village, Colo., Code no. 1996-35 § 1(1)e-f (1996)
Mt. Crested Butte	Mt. Crested Butte, Colo., Code § 15-116 -- 15-118 (1985)
New Castle	New Castle, Colo., Code § 9.64.010 - 9.64.050 (2004)
Northglenn	Northglenn, Colo., Code § 9-6-1 -- 9-6-7 (1972)
Pagosa Springs	Pagosa Springs, Colo., Code § 12.11.1 - 12.11.15 (2005)
Parker	Parker, Colo., Code § 8.09.010 - 8.09.090 (1994)
Pueblo	Pueblo, Colo., Code § 9.12.010 (2000)
Rico	Rico, Colo., Code § 116 (1895); § 219 (1966)
Rifle	Rifle, Colo., Code § 10-9-10 -- 10-9-50 (2005)
Sheridan	Sheridan, Colo., Code § 18.151 - 18.163 (2003)
Silverthorne	Silverthorne, Colo., Code § 2-4-25 -- 2-4-27 (1995)
Snowmass Village	Snowmass Village, Colo., Code § 10-41(7) (1994)
Steamboat Springs	Steamboat Springs, Colo., Code § 10-66 -- 10-174 (1992)
Sterling	Sterling, Colo., Code § 12.10 - 12.10.5 (1990)
Telluride	Telluride, Colo., Code § 9.20.010 - 9.20.040 (1997)
Thornton	Thornton, Colo., Code § 38-235 -- 38-241 (1996)
Trinidad	Trinidad, Colo., Code § 17-5; § 17-25 (1958)
Vail	Vail, Colo., Code § 6-3G-1 -- 6-3G-12 (1997)
Westminster	Westminster, Colo., Code § 6-2-9 -- 6-2-12 (1988)
Wheat Ridge	Wheat Ridge, Colo., Code § 16-81 -- 16-88 (1988)
Windsor	Windsor, Colo., Code § 10-49 (2004)
Winter Park	Winter Park, Colo., Code § 4-1-8 (2004)
Woodland Park	Woodland Park, Colo., Code § 9.70.010 - 9.70.100 (1977)
Wray	Wray, Colo., Code § 9.40.010 - 9.40.040 (1983)
Yuma	Yuma, Colo., Code § 9.32.010 - 9.32.050 (1983)

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2005, a true and correct copy of the foregoing **BRIEF OF AMICUS CURIAE COLORADO MUNICIPAL LEAGUE**, was placed in the United States mail, first class postage prepaid and addressed to the following:

Robert H. Dodd, Jr., Esq.
Assistant Attorney General
Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203

David Broadwell, Esq.
Assistant City Attorney
City and County of Denver
1437 Bannock St., #353
Denver, Colorado 80202


Kathleen M. Hanson