IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

Carol Donovan *et al.*,	:	
	:	
Plaintiffs,	:	
	:	**Case No. 21CV94117**
v.	:	
	:	**Judge Tepe**
City of Lebanon *et al.*,	:	
	:	
Defendants.	:	

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

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TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND 1

ARGUMENT 3

I. Standard of Review 3

II. Plaintiffs Have Standing to Pursue a Taxpayer Action 4

A. Plaintiffs Properly Filed Suit in Their Own Names 4

B. Plaintiffs Seek to Enforce the Public's Interests 5

III. Plaintiffs Have Stated an R.C. 733.59 Taxpayer Claim 8

A. The Ordinance Conflicts With R.C. 2923.123 and 2923.126 9

i. R.C. 2923.123 and 2923.126 Are Unambiguous 9

ii. Even if R.C. 2923.123 and 2923.126 Were Ambiguous, Lebanon's Cited Sources Would Not Support Its Reading 12

iii. Lebanon's Position Would Create an Unworkable Rule 14

B. The Ordinance Represents an Exercise of Lebanon's Police Power 14

C. Revised Code Sections 2923.123 and 2923.126 Are General Laws 16

IV. Plaintiffs Have Standing to Seek a Declaratory Judgment 17

V. Plaintiffs Have Stated a Claim for Declaratory Judgment 20

CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Am. Fin. Servs. Assn. v. Cleveland,
112 Ohio St.3d 170, 2006-Ohio-6043 ..... 8, 9

Arnold v. City of Cleveland,
67 Ohio St.3d 35, 616 N.E.2d 163 (1993) 16

Bower v. Village of Mount Sterling,
12th Dist. Madison No. CA99-10-025, 2000 Ohio App. LEXIS 1807 (Apr. 24, 2000) 4

Burger Brewing Co. v. Liquor Control Comm'n, Dep't of Liquor Control,
34 Ohio St.2d 93, 296 N.E.2d 261 (1973) 18

Chojnacki v. Mohr,
2018-Ohio-1167, 110 N.E.3d 689 (9th Dist.) 18

Cincinnati ex rel. Zimmer v. Cincinnati,
176 Ohio App.3d 588, 2008-Ohio-3156 (1st Dist.) 6

City of Canton v. State,
95 Ohio St.3d 149, 2002-Ohio-2005 ..... 9, 14, 16, 17

City of Cincinnati ex rel. Ritter v. Cincinnati Reds,
150 Ohio App.3d 728, 2002-Ohio-7078 (1st Dist.) 5

City of Cincinnati v. Baskin,
158 Ohio App.3d 539, 2004-Ohio-5055 (1st Dist.) 16

City of Cincinnati v. Langan,
94 Ohio App.3d 22, 640 N.E.2d 200 (1st Dist. 1994) 16

City of Toledo v. Beatty,
169 Ohio App.3d 502, 2006-Ohio-4638 (6th Dist.) 16

Cleveland ex rel. O'Malley v. White,
148 Ohio App.3d 564, 2002-Ohio-3633 (8th Dist.) 8

Columbus ex rel. Willits v. Cremean,
27 Ohio App.2d 137, 273 N.E.2d 324 (10th Dist. 1971) 8

Donaker v. Parcels of Land,
140 Ohio St.3d 346, 2014-Ohio-3656 ..... 10, 12

Dunbar v. State,
136 Ohio St.3d 181, 2013-Ohio-2163 12

Fort Trumbull Conservancy, LLC v. Alves,
262 Conn. 480, 815 A.2d 1188 (2003) 20

Home Builders Ass'n of Dayton & the Miami Valley v. City of Lebanon,
12th Dist. Warren No. CA2003-12-115, 2004-Ohio-4526 18

Jacobson v. Kaforey,
149 Ohio St.3d 398, 2016-Ohio-8434 ..... 10, 12

Klein v. Leis,
99 Ohio St.3d 537, 2003-Ohio-4779 15

Kuhar v. Medina Cnty. Bd. of Elections,
9th Dist. Medina No. 06CA0076-M, 2006-Ohio-5427 .....18, 19

Laituri v. Nero,
138 Ohio App.3d 348, 741 N.E.2d 228 (11th Dist. 2000).....5

Mack v. City of Toledo,
6th Dist. Lucas No. L-19-1010, 2019-Ohio-5427 4

Marich v. Bob Bennett Constr. Co.,
116 Ohio St.3d 553, 2008-Ohio-92 .....14, 15, 16

Mendenhall v. City of Akron,
117 Ohio St.3d 33, 2008-Ohio-270 16

Mid-Am. Fire & Cas. Co. v. Heasley,
113 Ohio St.3d 133, 2007-Ohio-1248 18

Moore v. City of Middletown,
133 Ohio St.3d 55, 2012-Ohio-3897 .....4, 17, 20

Morgan v. Ohio Adult Parole Auth.,
68 Ohio St.3d 344, 626 N.E.2d 939 (1994).....10

Neuendorff v. Gibbons,
2018-Ohio-2980 (6th Dist.) 8

Ohio Assn. of Private Detective Agencies v. City of N. Olmsted,
65 Ohio St.3d 242, 602 N.E.2d 1147 (1992).....16

Ohioans for Concealed Carry, Inc. v. City of Clyde,
120 Ohio St.3d 96, 2008-Ohio-4605 .....passim

Pelletier v. City of Campbell,
153 Ohio St.3d 611, 2018-Ohio-2121 10

Porter v. Oberlin,
1 Ohio St.2d 143, 205 N.E.2d 363 (1965).....8

Rockies Express, L.L.C. v. McClain,
159 Ohio St.3d 302, 2020-Ohio-410 13

State ex rel. Caspar v. Dayton,
53 Ohio St.3d 16, 558 N.E.2d 49 (1990).....5, 8

State ex rel. Cater v. N. Olmsted,
69 Ohio St.3d 315, 631 N.E.2d 1048 (1994).....7

State ex rel. Cleveland Muni. Court v. Cleveland City Council,
34 Ohio St.2d 120, 296 N.E.2d 544 (1973).....12

State ex rel. Doran v. Preble Cnty. Bd. of Comm'rs,
2013-Ohio-3579, 995 N.E.2d 239 (12th Dist.).....5

State ex rel. Fisher v. Cleveland,
109 Ohio St.3d 33, 2006-Ohio-1827 .....5, 7, 8

State ex rel. Glasstetter v. Rehab. Servs. Commn.,
122 Ohio St.3d 432, 2009-Ohio-3507 13

State ex rel. Hanson v. Guernsey County Bd. of Comm'rs,
65 Ohio St.3d 545, 605 N.E.2d 378 (1992).....4

State ex rel. Hawke v. Le Blond,
108 Ohio St. 126, 140 N.E. 510 (1923).....12

State ex rel. Hostetter v. Hunt,
56 Ohio App. 120, 10 N.E.2d 155 (5th Dist. 1936).....5

State ex rel. Law Office of the Pub. Defender v. Rosencrans,
2d Dist. Montgomery No. CA20416, 2005-Ohio-6681.....12

State ex rel. Mason v. State Emp. Relations Bd.,
133 Ohio App.3d 213, 727 N.E.2d 181 (10th Dist. 1999).....20

State ex rel. Musser v. City of Massillon,
12 Ohio St.3d 42, 465 N.E.2d 400 (1984).....12

State ex rel. Teamsters v. Cuyahoga Cnty. Bd. of Commrs,
132 Ohio St.3d 47, 2012-Ohio-1861 7

State ex rel. White v. Cleveland,
34 Ohio St.2d 37, 295 N.E.2d 665 (1973).....7

State v. Nelson,
162 Ohio St.3d 338, 2020-Ohio-3690 10

Village of Struthers v. Sokol,
108 Ohio St. 263, 140 N.E. 519 (1923).....9

Waldman v. Pitcher,
2016-Ohio-5909, 70 N.E.3d 1025 (1st Dist.) 18

Wesolowski v. City of Broadview Heights Planning Commn.,
158 Ohio St.3d 58, 2019-Ohio-3713 15

Weyandt v. Davis,
112 Ohio App.3d 717, 679 N.E.2d 1191 (9th Dist.1996).....18, 19

Wilkins v. Village of Harrisburg,
10th Dist. Franklin No. 12AP-1046, 2013-Ohio-2751 20

Statutes

R.C. 1.42.....10

R.C. 1.49.....12, 14

R.C. 1901.028.....13

R.C. 1901.36.....12

R.C. 2923.123 ..... passim
R.C. 2923.125 2
R.C. 2923.126 ..... passim
R.C. 2945.49 13
R.C. 309.13 5
R.C. 5705.45 5
R.C. 733.56 8
R.C. 733.59 ..... 4, 5, 7, 8
R.C. 9.68 17

Constitutional Provisions

Ohio Constitution, Article XVIII, Section 3 8

Rules

Civ. R. 12(B)(6) 3
Civ. R. 17(A) 4

Other Authorities

Court Facility Standards, https://www.supremecourt.ohio.gov/courtSecurity/appD.pdf 10

Courtroom, https://www.lexico.com/en/definition/courtroom 10

Courtroom, https://www.merriam-webster.com/dictionary/courtroom 10

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INTRODUCTION

This case presents a straightforward question of statutory construction. Ohio law has long prohibited weapons, including concealed handguns, within any building or structure that contains a courtroom. The City Council of Lebanon, Ohio recently passed Ordinance No. 2020-022 (the "Ordinance"), which permits licensed individuals to carry concealed handguns at certain times in the Lebanon City Building. There is no dispute that the City Building houses the Lebanon Municipal Court, including the Courtroom of the Lebanon Municipal Court. There is also no dispute that, if the City Building contains a courtroom, the Ordinance would conflict with Ohio law.

Instead, Defendants Lebanon and City Attorney Mark Yurick (collectively, "Lebanon" or "the City") contend that the Lebanon Municipal Courtroom is not a "courtroom" for purposes of Ohio law when the Municipal Court is not "in session." As detailed herein, however, Lebanon's proposed harmonization of the Ordinance and Ohio law is contrary to the unambiguous language of the state statutes at issue, disregards Ohio's codified rules of statutory interpretation, and requires a reading of state law that is confusing and unworkable. The Ordinance clearly conflicts with Ohio's prohibition on weapons within buildings that—like the City Building—contain a courtroom; that state law prohibition is not limited temporally to only such times that a court is in session. The Ordinance thus represents an abuse of Lebanon's corporate power that must fall.

Lebanon presents several other arguments—including arguments disputing Plaintiffs' standing and the Ordinance's status as a police power ordinance—but none warrant dismissal or otherwise overcome the central flaw in Lebanon's position.

BACKGROUND

Ohio law prohibits the possession and carrying of weapons, including concealed handguns,

in any structure that contains a courtroom. Compl. ¶¶ 18-30. Specifically, R.C. 2923.123(A) provides:

> No person shall knowingly convey or attempt to convey a deadly weapon or dangerous ordnance into a courthouse or into another building or structure in which a courtroom is located.

Likewise, R.C. 2923.123(B) states:

> No person shall knowingly possess or have under the person's control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located.

Violations of R.C. 2923.123 can carry felony charges. R.C. 2923.123(D).

Ohio law also provides a licensing scheme for the carrying of concealed handguns. Compl. ¶¶ 22-27; *see also* R.C. 2923.125. Licensees may carry a concealed handgun "anywhere in this state," subject to certain enumerated exceptions. R.C. 2923.126(A). As relevant here, Ohio law exempts all buildings containing courtrooms from the spaces in which concealed carry licensees are permitted to carry handguns:

> A valid [concealed handgun] license does not authorize the licensee to carry a concealed handgun into . . . [a] courthouse or another building or structure in which a courtroom is located if the licensee's carrying the concealed handgun is in violation of [R.C. 2923.123].

R.C. 2923.126(B)(3). Additionally, although R.C. 2923.126 grants local governments some authority to allow concealed handguns in government buildings under their control, that authority does *not* extend to courthouses or any building or structure in which a courtroom is located:

> A valid [concealed handgun] license does not authorize the licensee to carry a concealed handgun into . . . [a]ny building that is a government facility of this state or a political subdivision of this state and that is not a building that is used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is *not a courthouse or other building or structure in which a courtroom is located that is subject to division (B)(3) of this section*, unless the governing body with authority over the building has enacted a statute, ordinance, or policy that permits a licensee to carry a concealed handgun into the building.

(Emphasis added.) R.C. 2923.126(B)(7). In short, Ohio law prohibits the possession of firearms within any building "in which a courtroom is located."

In March 2020, the Lebanon City Council enacted the Ordinance, which permits handguns within the City Building at certain times, including during City Council proceedings that take place in the Municipal Courtroom. Compl. ¶¶ 1-3, 30. Specifically, the Ordinance provides:

> Pursuant to Ohio Revised Code section 2923.126, a licensee under Ohio Revised Code section 2923.125 or section 2923.1213 is authorized to carry a concealed handgun in the City of Lebanon, Ohio City Building located at 50 South Broadway, Lebanon, Ohio, except during the operation of any function of the Lebanon Municipal Court.

Compl. Ex. 1. It is undisputed that the City Building houses the Lebanon Municipal Court, including the associated courtroom. Compl. ¶¶ 28-30.

Plaintiffs are Lebanon taxpayers and active members of the Lebanon community. Compl. ¶¶ 1, 4, 10-13, 45. The Ordinance chills their engagement in City Council meetings and the democratic process by exposing them, and all Lebanon residents, to an increased risk of physical harm and armed intimidation, particularly in the context of vigorous and sometimes heated City Council debates. Compl. ¶¶ 5-6, 46-59. Additionally, the Ordinance muddles the otherwise clear state law prohibition on concealed handguns within the City Building, which undermines the ability of concealed carry licensees and other members of the public to determine whether and when handguns are permitted in the City Building. Compl. ¶ 7.

Plaintiffs bring municipal taxpayer and declaratory judgment claims challenging the Ordinance and seeking injunctive relief to restrain its enforcement.

ARGUMENT

I. Standard of Review

A motion to dismiss filed pursuant to Civ. R. 12(B)(6) "is procedural and tests the

sufficiency of the complaint." *State ex rel. Hanson v. Guernsey County Bd. of Comm'rs*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). The court takes the material allegations of the complaint as true and draws all reasonable inferences in the nonmovant's favor. *Id*.; *see also Moore v. City of Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, ¶ 4. Consistent with Ohio's liberal pleading standard, "a pleader is ordinarily not required to allege in the complaint every fact he or she intends to prove; such facts may not be available until after discovery." *Hanson* at 549. Dismissal is appropriate only where it appears "beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *Id*. at 548.

II. Plaintiffs Have Standing to Pursue a Taxpayer Action

Lebanon first contends that Plaintiffs' taxpayer claim fails procedurally because they (a) did not file the action in the name of the real party in interest and (b) seek to vindicate a private right. *See* MTD at 5-7. Neither objection stands up to scrutiny.

A. Plaintiffs Properly Filed Suit in Their Own Names

Revised Code 733.59 provides that a municipal taxpayer "may institute suit *in his own name*, on behalf of the municipal corporation" in order to restrain the municipality's abuse of corporate powers. (Emphasis added.) R.C. 733.59.[1] Plaintiffs filed a taxpayer claim in their own names, "in their capacity as taxpayers and on behalf of the municipal corporation of Lebanon." Compl. ¶ 73; *see Bower v. Village of Mount Sterling*, 12th Dist. Madison No. CA99-10-025, 2000 Ohio App. LEXIS 1807 (Apr. 24, 2000) (taxpayer action filed in plaintiff's own name); *Mack v. City of Toledo*, 6th Dist. Lucas No. L-19-1010, 2019-Ohio-5427 (same). Plaintiffs complied with the text of R.C. 733.59, which resolves the issue.

[1] This is consistent with Ohio Rule of Civil Procedure 17(A), which provides: "Every action shall be prosecuted in the name of the real party in interest . . . . [A] party authorized by statute may sue in his name as such representative [of the real party in interest] without joining with him the party for whose benefit the action is brought."

Lebanon relies primarily on a decision that interprets a *different* taxpayer statute that, unlike R.C. 733.59, requires a taxpayer to "institute [a] civil action *in the name of the state*." (Emphasis added.) R.C. 309.13; *see State ex rel. Hostetter v. Hunt*, 56 Ohio App. 120, 10 N.E.2d 155 (5th Dist. 1936) (addressing county taxpayer case filed under R.C. 309.13's predecessor statute).[2] Plaintiffs are not proceeding under that statute, and even if Lebanon were correct about the case caption, that is a matter cured by simple amendment.[3]

B. Plaintiffs Seek to Enforce the Public's Interests

In order for a taxpayer to "maintain an action under R.C. 733.59, the 'aim must be to enforce a public right, regardless of any personal or private motive or advantage.'" *State ex rel. Fisher v. Cleveland*, 109 Ohio St.3d 33, 2006-Ohio-1827, ¶ 12, quoting *State ex rel. Caspar v. Dayton*, 53 Ohio St.3d 16, 20, 558 N.E.2d 49 (1990). Plaintiffs here seek to enforce two public rights, neither of which Lebanon disputes.

First, Plaintiffs seek to enforce the public's interest in clear, uniform, and administrable rules regarding where and when licensed individuals can carry concealed handguns. Compl. ¶¶ 7, 74; *see Ohioans for Concealed Carry, Inc. v. City of Clyde,* 120 Ohio St.3d 96, 2008-Ohio-4605, ¶ 40 ("The General Assembly, in crafting [R.C. 2923.126], indicated that it 'wish[ed] to ensure uniformity throughout the state regarding . . . the authority granted to a person holding a license

[2] Lebanon's other cited authority likewise addresses inapposite questions, most of which concern different taxpayer action statutes. *See State ex rel. Doran v. Preble Cnty. Bd. of Comm'rs*, 2013-Ohio-3579, 995 N.E.2d 239 (12th Dist.) (addressing viability of doctrine of laches defense to county taxpayer action filed pursuant to R.C. 309.13); *City of Cincinnati ex rel. Ritter v. Cincinnati Reds*, 150 Ohio App.3d 728, 2002-Ohio-7078, ¶¶ 20-24 (1st Dist.) (evaluating trial court's improper conversion of municipal taxpayer action into a county taxpayer action); *Laituri v. Nero*, 138 Ohio App.3d 348, 741 N.E.2d 228 (11th Dist. 2000) (considering city's role in negotiating monetary settlement of taxpayer action filed pursuant to R.C. 5705.45).

[3] The City had ample notice of Plaintiffs' claims, and sufficient opportunity to pursue this case on its own behalf. *See* Compl. ¶¶ 60-62 & Ex. 3. There has been no prejudice to the City's interest. Leave to amend, rather than dismissal, would be the appropriate outcome.

of that nature.'"); *Cincinnati ex rel. Zimmer v. Cincinnati*, 176 Ohio App.3d 588, 2008-Ohio-3156, ¶¶ 12-13 (1st Dist.) (endorsing taxpayer's enforcement of public interest in comprehensiveness and uniformity of state prevailing wage law). Ohio law clearly distinguishes permitted from prohibited conduct: Licensees may carry concealed handguns "anywhere in this state," subject to specified exceptions, including an exception that covers all buildings containing courtrooms. R.C. 2923.126; Compl. ¶¶ 18-27. The Ordinance, on the other hand, states that licensees may carry handguns in the City Building "except during the operation of any function of the Lebanon Municipal Court." Compl. ¶ 33 & Ex. 1. The Ordinance conflicts with the unambiguous state law prohibition on handgun possession within the City Building. Compl. ¶¶ 35-39. Additionally, the Ordinance is unclear on its own terms because it does not specify which activities constitute "functions" of the Municipal Court.[4] The Ordinance thus undermines the public's interest in clear guidance regarding whether and when firearms are permitted in the City Building. Compl. ¶¶ 7, 74. This public interest is particularly important because individuals who carry firearms into the City Building in violation of state law risk criminal penalties.

Second, Plaintiffs seek to enforce the public's interest in safe access to their government and safe engagement in the democratic process. Compl. ¶¶ 5, 74. The presence of firearms in a sensitive space like the City Building increases the risk of physical harm and armed intimidation. Compl. ¶ 6. Moreover, the Ohio General Assembly's policy choice to prohibit weapons in buildings containing courtrooms further indicates the relevant public safety interest. *See* R.C. 2923.123; R.C. 2923.126(B)(3); Compl. ¶¶ 18-27.

[4] For instance, it is not clear whether some "function" of the Municipal Court would be "in operation" for purposes of the Ordinance when a judge, court staff, or the probation department work on court business in the City Building outside normal court hours, or when search warrant reviews or other proceedings occur after hours.

Lebanon does not meaningfully dispute that Plaintiffs seek to enforce these public interests. Instead, the City takes issue with Plaintiffs' allegations that the Ordinance *also* affects their personal interests. MTD at 5-7. But a taxpayer plaintiff is not precluded from enforcement of a public right by virtue of her private interest. Indeed, it is unlikely that many taxpayers would shoulder the burden of litigation to enforce a public right without also having some personal interest in the outcome. In *Fisher*, for instance, the Ohio Supreme Court considered an R.C. 733.59 taxpayer challenge by a firefighter and a firefighters' association to Cleveland's mandate that firefighters produce their tax returns to demonstrate residency. The individual firefighter, who objected to a request for his tax returns, had a private motive to pursue the case. *See Fisher*, 2006-Ohio-1827, ¶¶ 12-17. Nevertheless, the Court found that the plaintiffs properly sought to enforce several public rights, including the public's interest in the continued employment of firefighters and police and the public's interest as potential municipal employees. *Id*. Similarly, Plaintiffs' personal interest in the instant case does not diminish their aim to enforce the public's interests. *See State ex rel. Cater v. N. Olmsted,* 69 Ohio St.3d 315, 323, 631 N.E.2d 1048 (1994) (affirming taxpayer's standing to challenge removal of political ally from public office "notwithstanding that [plaintiff's] motives may not have been purely philanthropic"); *State ex rel. White v. Cleveland*, 34 Ohio St.2d 37, 295 N.E.2d 665 (1973) (taxpayers, who had been denied access to certain city records, sought to enforce the public's right to inspect the records).

Lebanon cites several decisions in support of its argument that Plaintiffs' personal interest precludes their taxpayer claim. But the defect in those cases was not the presence of the plaintiffs' personal interest, but the absence of any vindication of a public right.[5] Plaintiffs here, however,

[5] *See State ex rel. Teamsters v. Cuyahoga Cnty. Bd. of Commrs,* 132 Ohio St.3d 47, 2012-Ohio-1861, ¶ 17 (finding that, in county taxpayers' challenge to exclusion of sanitation workers from a county-run early retirement program, "there is no vindication of public rights or conferral of public

seek to enforce the public's interest, and therefore may bring this taxpayer claim.

III. Plaintiffs Have Stated an R.C. 733.59 Taxpayer Claim

Lebanon further contends that Plaintiffs have not sufficiently alleged a taxpayer claim on the merits. MTD at 8-19. Ohio law permits a taxpayer to seek injunctive relief to restrain a municipality's abuse of its corporate powers. R.C. 733.56 and 733.59. Abuse of corporate power includes "'the unlawful exercise of powers possessed by the corporation, as well as the assumption of power not conferred.'" *Fisher* at ¶ 19, quoting *Porter v. Oberlin*, 1 Ohio St.2d 143, 146, 205 N.E.2d 363 (1965). Here, Plaintiffs allege that Lebanon abused its corporate power because the Ordinance violates state law and exceeds its home rule authority. Compl. ¶¶ 66-71.

Under the Ohio Constitution, municipalities are authorized "to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Constitution, Article XVIII, Section 3. But a municipality can exceed this home rule authority when it passes an ordinance that conflicts with a state statute. *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, ¶ 23. A state statute takes precedence over a municipal ordinance when:

> (1) the ordinance is in conflict with the statute,
> (2) the ordinance is an exercise of the police power, rather than of local self-government, and

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benefits to be found in the union's attempt to obtain retirement benefits for a small number of employees"); *Caspar*, 53 Ohio St.3d at 20 (challenge by police officers to city's computation of their vacation time was an "action to compel fringe benefits for their own benefit" and officers' "right to vacation [is not] a 'public' right"); *Neuendorff v. Gibbons*, 2018-Ohio-2980, ¶ 11 (6th Dist.) ("[A]ppellant's complaint 'articulates no public right and no public benefit.'"); *Cleveland ex rel. O'Malley v. White*, 148 Ohio App.3d 564, 2002-Ohio-3633, ¶¶ 44-46 (8th Dist.) (acknowledging plaintiff's "private interest" and stating: "Nonetheless, a taxpayer has standing to enforce a public right, regardless of private or personal benefit . . . . However, when the taxpayer's aim is merely for his own benefit, no public right exists, and a taxpayer action pursuant to R.C. 733.59 cannot be maintained."); *Columbus ex rel. Willits v. Cremean*, 27 Ohio App.2d 137, 156, 273 N.E.2d 324 (10th Dist. 1971) ("The issuance of a permit is not a matter for a class action and is in no sense a proper subject for a 'taxpayer' suit.").

(3) the statute is a general law.

City of Canton v. State, 95 Ohio St.3d 149, 2002-Ohio-2005, ¶ 9; *accord* MTD at 9. Here, Plaintiffs' claim satisfies the *Canton* factors: (1) The Ordinance conflicts with R.C. 2923.123 and 2923.126; (2) the Ordinance is an exercise of Lebanon's police power; and (3) R.C. 2923.123 and 2923.126 are general laws. Compl. ¶¶ 68-71. As such, the Ordinance exceeds Lebanon's home rule authority and represents an abuse of its corporate power.

Lebanon disputes all three elements of the *Canton* test. It is wrong on all three.

A. The Ordinance Conflicts With R.C. 2923.123 and 2923.126

First, the Ordinance conflicts with R.C. 2923.123 and 2923.126, which prohibit the possession of weapons within any building that contains a courtroom. Compl. ¶¶ 18-39. An ordinance conflicts with a state law when the ordinance "'permits or licenses that which the statute forbids and prohibits, and vice versa.'" *Am. Fin. Servs. Assn.* at ¶ 40, quoting *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923), paragraph two of the syllabus. Here, the Ordinance permits that which state law forbids in that it permits the possession of handguns in the City Building, which contains the Courtroom of the Lebanon Municipal Court. Compl. ¶¶ 29, 70.

Lebanon contends that the Ordinance does not conflict with Ohio law because the Lebanon Municipal Courtroom is not a "courtroom" for purposes of the Ohio statutes when the Municipal Court is not "in session." MTD at 11-15. Lebanon's position violates fundamental rules of statutory construction, in service of a reading that is confusing and unworkable.[6]

i. R.C. 2923.123 and 2923.126 Are Unambiguous

Revised Code 2923.123 and 2923.126 are unambiguous, and Lebanon does not contend

[6] To the extent this a question of fact, Lebanon's argument fails because Plaintiffs allege, without temporal limitation, that the City Building contains the Lebanon Municipal Courtroom, *see* Compl. ¶¶ 28-30, and Plaintiffs' fact allegations are assumed to be true at this stage.

otherwise. Courts apply unambiguous statute as written, *Donaker v. Parcels of Land*, 140 Ohio St.3d 346, 2014-Ohio-3656, ¶ 12 and "'do not have the authority' to dig deeper than the plain meaning of an unambiguous statute 'under the guise of either statutory interpretation or liberal construction,'" *Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, ¶ 8, quoting *Morgan v. Ohio Adult Parole Auth.*, 68 Ohio St.3d 344, 347, 626 N.E.2d 939 (1994). Both R.C. 2923.123 and 2923.126 prohibit possession of handguns within any building "in which a courtroom is located." The statutes do not define "courtroom." As such, the ordinary meaning of the word applies: "In the absence of a definition of a word or phrase used in a statute, the words are to be given their common, ordinary, and accepted meaning." *Donaker* at ¶ 12; *see also State v. Nelson*, 162 Ohio St.3d 338, 2020-Ohio-3690, ¶ 18; *Pelletier v. City of Campbell*, 153 Ohio St.3d 611, 2018-Ohio-2121, ¶ 14; R.C. 1.42 ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage."). The common, ordinary, and accepted meaning of the word "courtroom" is a room where a court of law sits.[7] A courtroom is a physical space, and not, as Lebanon contends, a period in time.[8] That events other than court proceedings can occur in a courtroom does not transform the essential character or primary purpose of the space. When bar association events, CLE classes, social events, or community meetings occur in courtrooms, those spaces are still understood to be courtrooms. For comparison, R.C. 2923.126(B)(6) prohibits the carrying of concealed handguns in churches (and other place of

[7] *See, e.g.*, *Courtroom*, https://www.lexico.com/en/definition/courtroom ("The place or room in which a court of law meets"); *Courtroom*, https://www.merriam-webster.com/dictionary/courtroom ("a room in which a court of law is held"); *see also Ohio's Concealed Carry Laws and License Application* (Apr. 12, 2019), https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/Concealed-Carry-Publications/Concealed-Carry-Laws-Manual-(PDF).aspx (listing "Forbidden Carry Zones," including, without limitation, "Courthouses or buildings in which a courtroom is located").

[8] *Cf. Court Facility Standards*, https://www.supremecourt.ohio.gov/courtSecurity/appD.pdf (describing required physical specifications for courtrooms).

worship), unless the church permits otherwise. That prohibition would plainly apply not only during church services, but also when a church building is used for school or youth group activities, community dinners, or soup kitchens. So too here; although the Lebanon City Council uses the Municipal Courtroom for evening meetings twice a month (Compl. ¶ 40), the room's essential character and daily use is as the room where the Lebanon Municipal Court sits.[9]

Given the common and ordinary meaning of the term "courtroom," it is clear that R.C. 2923.123 and 2923.126 do not temporally limit the prohibition on weapons in buildings that contain courtrooms. This is practical because judges and court staff can work in chambers outside normal court hours or active court proceedings. For instance, the judges and staff of the Lebanon Municipal Court can work in the court's offices within the City Building in the evenings, including while City Council meetings occur in the Municipal Courtroom. Moreover, courts can hold warrant reviews, probationer interviews, mediations, or other proceedings outside normal court hours. Simply put, many courts effectively operate 24 hours per day, and so too does the statutory protection of judges and court staff from exposure to weapons. Thus, it makes sense that the General Assembly prohibited carrying firearms at all times in a building "in which a courtroom is located" and not—as Lebanon would like—only while court is "in session."

Lebanon, however, asserts that a "courtroom" is temporary in nature, and does not exist as such when the relevant court is not "in session." But Lebanon's position would require grafting additional language, such as "while the court is in session," onto the state statutes in order to

[9] *See, e.g.*, Lawrence Budd, *Lebanon close to permitting concealed weapons at council meetings* (Feb. 18, 2020), https://www.daytondailynews.com/news/crime--law/lebanon-close-permitting-concealed-weapons-council-meetings/no26cwhzoWGRlts76R33uN/ ("The *courtroom* is used for court sessions and most city council meetings." (Emphasis added.)).

temporally limit the firearms prohibition, which a court is not permitted to do. *See Donaker* at ¶ 12 (Courts "must give effect to the words used, refraining from inserting or deleting words.").

ii. Even if R.C. 2923.123 and 2923.126 Were Ambiguous, Lebanon's Cited Sources Would Not Support Its Reading

To support its reading of R.C. 2923.123 and 2923.126, Lebanon points to other statutory provisions, inapposite judicial decisions, and the General Assembly's purported legislative intent. MTD at 11-14. But such sources are not appropriate tools for construing unambiguous statutes. *See* R.C. 1.49 (enumerating factors that a court may consider in construing *ambiguous* statutes); *Jacobson*, 2016-Ohio-8434, ¶ 84 ("Without 'an initial finding' of ambiguity, 'inquiry into legislative intent, legislative history, public policy, the consequences of an interpretation, or any other factors identified in R.C. 1.49 is inappropriate.'"), quoting *Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, ¶ 16. Even assuming the statutes are ambiguous (they are not), the City's construction of "courtroom" should be rejected.

The City first points to R.C. 1901.36, which instructs local legislative authorities to provide accommodations and personnel for municipal courts. *See* MTD at 11-12. But neither that provision nor the related decisions cited by Lebanon speak to any conception of a "courtroom" as time-bound.[10] Lebanon's citations to *State ex rel. Hawke v. Le Blond*, 108 Ohio St. 126, 140 N.E. 510 (1923), and *State ex rel. Law Office of the Pub. Defender v. Rosencrans*, 2d Dist. Montgomery No. CA20416, 2005-Ohio-6681, are similarly unavailing. The former explored the difference between the authority of the "judge" and of the "court," *Hawke* at 132-133, and the latter concerned the recording of mayor's court proceedings, *see Rosencrans* at ¶ 27. Neither decision sheds light on

[10] *See State ex rel. Musser v. City of Massillon,* 12 Ohio St.3d 42, 45-46, 465 N.E.2d 400 (1984) (discussing R.C. 1901.36 in the context of compelling a city to provide courtroom space for a court referee); *State ex rel. Cleveland Muni. Court v. Cleveland City Council*, 34 Ohio St.2d 120, 127, 296 N.E.2d 544 (1973) (considering R.C. 1901.36 in determining that local legislative authorities retain some discretion over the amount of funds to be appropriated to the municipal courts).

the meaning of the word "courtroom."

Lebanon also relies on R.C. 1901.028 and 2945.49, two provisions that likewise do not support its position, and even arguably undermine it. *See* MTD at 13. The former provides that, in the event of an emergency, a municipal court may operate at a temporary location. R.C. 1901.028(A). Notably, the statute provides that a temporary courtroom operates from "the date" provided by the requisite authorizing order until such order is rescinded. *Id*. In other words, a duly authorized temporary courtroom *continually* exists as a courtroom until rescission of the authorizing order. Revised Code 2945.49, for its part, enumerates the circumstances under which prosecutors may use preliminary hearing or deposition testimony of a child crime victim at trial. The text of the statute does not suggest that the room in which such a child gives deposition testimony becomes a courtroom. On the contrary, the statute specifies that a child victim's deposition "*may be taken outside of the courtroom* and televised into the courtroom" during trial. (Emphasis added.) R.C. 2945.49(B)(2).

Lebanon also discusses, without citation, the "manifest legislative intent of the R.C. Chapter 2923 provisions" to protect against the "increased risk of violence" attending disputes between hostile parties who can become "agitated and even dangerous." MTD at 14. But consideration of legislative intent is appropriate only where a statute is ambiguous. *See Rockies Express, L.L.C. v. McClain*, 159 Ohio St.3d 302, 2020-Ohio-410, ¶ 15. Even if it were appropriate here, the risk of violence is equally salient outside active court proceedings. The safety of a judge or court staff is just as important when they are working in chambers as when conducting proceedings in the courtroom, and it would be unreasonable for the protection of court personnel to hinge on the court being "in session." *See State ex rel. Glasstetter v. Rehab. Servs. Commn.*, 122 Ohio St.3d 432, 2009-Ohio-3507, ¶ 23 (invoking courts' "duty to construe statutes to avoid

unreasonable results").

iii. Lebanon's Position Would Create an Unworkable Rule

Moreover, Lebanon's reading, if adopted, would create an unworkable rule. *See* R.C. 1.49 (E) (courts construing ambiguous statutes may consider the "consequences of a particular construction"). Reading "courtroom" as a time-constrained concept, rather than a physical space, would create confusion as to when a room is a "courtroom" and hence as to when firearms are prohibited. For instance, it would not be clear whether weapons are permitted or prohibited under state law when (1) a courtroom is not in use, but a jury deliberates in the jury room; (2) a judge or magistrate works in chambers, hears emergency motions, or reviews warrants outside normal court hours; (3) parties wait in a courtroom for proceedings to begin, prior to the bailiff declaring the court "in session;" (4) the court breaks for lunch during normal court hours; or (5) judges preside over non-litigation proceedings in a courtroom, such as moot court competitions. When the local bar association has an event with judges in the courtroom, is it no longer a "courtroom" for statutory purposes because court is not in session?

In short, Lebanon's position requires a reading of R.C. 2923.123 and 2923.126 that is contrary to the statutes' unambiguous text and would also introduce confusion. Because the Ordinance conflicts with Ohio law, it meets the first *Canton* element.

B. The Ordinance Represents an Exercise of Lebanon's Police Power

Lebanon further contends that state law does not take precedence because the Ordinance is an exercise of local self-governance, not police power. MTD at 15-19. The Supreme Court of Ohio has explained that "[p]olice-power ordinances . . . 'protect the public health, safety, or morals, or the general welfare of the public.'" *Clyde*, 2008-Ohio-4605, ¶ 30, quoting *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92, ¶ 11. By contrast, "'[a]n ordinance created under the power of local self-government must relate "*solely* to the government and administration of

the internal affairs of the municipality."'" (Emphasis added.) *Id*., quoting *Marich* at ¶ 11. For instance, "the determination of the salaries of city employees and the procedure for appointing city police officers constitute matters of local self-government." (Citations omitted.) *Wesolowski v. City of Broadview Heights Planning Commn.*, 158 Ohio St.3d 58, 2019-Ohio-3713, ¶ 18.

The Ordinance at issue here fits squarely within Lebanon's police power. The Supreme Court of Ohio has stated that "local ordinances regulating firearm possession are police-power regulations." *Clyde* at ¶ 34. The *Clyde* court relied in part on its earlier conclusion that "concealed-weapon laws regulate 'the manner in which weapons can be carried' and 'involve [] the police power' of the enacting authority." *Id*. at ¶ 33, quoting *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, ¶ 13. The *Clyde* ordinance regulated the geographical boundaries of permissible concealed handgun possession by prohibiting firearms in municipal parks. *See id*. at ¶ 1. Similarly, Lebanon's Ordinance regulates the boundaries of permissible firearms possession by purporting to permit concealed handguns in the City Building. Moreover, the Ordinance itself reveals the City Council's focus on public safety and the general welfare: "This Ordinance is hereby declared to be necessary for the preservation of the public peace, health, safety, morals and welfare of the City of Lebanon." Compl. Ex. 1. The Supreme Court found similar language in the *Clyde* ordinance persuasive. *Clyde* at ¶ 37. Lebanon highlights additional language in the Ordinance concerning the "'administration of Council.'" MTD at 18 & n.4, quoting Compl. Ex. 1. But such language does not outweigh the controlling Supreme Court precedent and the Ordinance's explicit public-safety objective. On the contrary, the inclusion of both characterizations undermines Lebanon's position that the Ordinance relates "'"*solely* to the government and administration of the internal affairs of the municipality."'" (Emphasis added.) *Clyde* at ¶ 30, quoting *Marich* at ¶ 11.

Lebanon argues that its Ordinance is distinguishable from the *Clyde* ordinance because the

former is permissive while the latter was restrictive and imposed penalties. MTD at 16-18. But the *Clyde* ordinance's penalty provision was only one factor considered by the Supreme Court, relevant insofar as it showed that the ordinance was aimed at "the general welfare of [the] municipality's citizens." *Clyde* at ¶ 36. Moreover, an earlier Supreme Court of Ohio decision cited by both the *Clyde* court and Lebanon's motion demonstrates that a permissive ordinance can constitute an exercise of police power. *See Marich* at ¶ 34. Nor do the other decisions cited by Lebanon support the proposition that a police-power ordinance *must* be restrictive or impose a penalty.[11] Indeed, Lebanon's asymmetrical conception of "police power" would effectively gut the General Assembly's power to legislate firearms restrictions by allowing municipalities to enact end-runs around those restrictions in the name of self-governance.

C. Revised Code Sections 2923.123 and 2923.126 Are General Laws

Finally, both statutes with which the Ordinance conflicts—R.C. 2923.123 and 2923.126—are general laws for purposes of the home-rule analysis. Lebanon disputes the status of R.C. 2923.126 as a general law (MTD at 19 n.5), but the Supreme Court of Ohio has settled the question. *Clyde* at ¶¶ 38-52; *see also Canton*, 2002-Ohio-2005, at ¶ 21 (stating four factors that determine

[11] *See Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, ¶ 19 (considering ordinance that authorized automated traffic law enforcement and stating summarily that it is "well established that regulation of traffic is an exercise of police power," without relying on the ordinance's penalty provision); *Ohio Assn. of Private Detective Agencies v. City of N. Olmsted*, 65 Ohio St.3d 242, 244, 602 N.E.2d 1147 (1992) (ruling only that "[a]ny municipal ordinance, which prohibits the doing of something without a municipal license to do it, is a police regulation within the meaning of [the Home Rule Amendment]"); *City of Toledo v. Beatty*, 169 Ohio App.3d 502, 2006-Ohio-4638, ¶ 45 (6th Dist.) (holding that rule prohibiting firearms in city parks is exercise of police power and relying on both *Klein* and the fact that the rule could affect nonresidents who visit Toledo); *City of Cincinnati v. Langan*, 94 Ohio App.3d 22, 30, 640 N.E.2d 200 (1st Dist. 1994) (stating simply that a city's prohibition on possession of semiautomatic firearms constituted an exercise of police power because "'the ultimate objective of the legislation appears to be public safety'"), quoting *Arnold v. City of Cleveland*, 67 Ohio St.3d 35, 48, 616 N.E.2d 163 (1993); *City of Cincinnati v. Baskin*, 158 Ohio App.3d 539, 2004-Ohio-5055, ¶ 8 (1st Dist.) (relying on *Langan*), *rev'd*, 112 Ohio St.3d 279, 2006-Ohio-6422.

whether a statute is a general law). In line with *Canton*, the *Clyde* court determined that R.C. 2923.126 constitutes a general law because it (1) is part of Ohio's "statewide comprehensive handgun-possession laws;" (2) applies uniformly across the state; (3) is an "exercise of police power" that "provides a program to foster proper, legal handgun ownership in this state;"[12] and (4) "prescribes a rule of conduct for any citizen seeking to carry a concealed handgun." *Clyde* at ¶¶ 38-52. Lebanon suggests that the *Clyde* decision relies on Ohio's firearms preemption statute, R.C. 9.68, such that the decision "could be interpreted as merely ensuring that local governments do not attempt to impose more restrictions on the carrying and possession of handguns." MTD at 19 n.5. Lebanon's reading is belied by the *Clyde* court's thorough application of the *Canton* standard, in which it referenced but did not rely on R.C. 9.68. *See Clyde* at ¶ 40. *Clyde* controls here and R.C. 2923.126 is a general law.

Because all three of the *Canton* elements are satisfied, the Ordinance exceeds Lebanon's home rule authority and thereby represents an abuse of corporate powers.

IV. Plaintiffs Have Standing to Seek a Declaratory Judgment

In addition to the taxpayer claim, Plaintiffs bring an action for declaratory judgment. Lebanon challenges Plaintiffs' standing. The parties agree that Ohio law grants standing to seek declaratory relief where there is a real, justiciable controversy and where relief is necessary to protect the plaintiffs' rights. *See, e.g.*, *Moore*, 2012-Ohio-3897, ¶¶ 47-49; *accord* MTD at 20. Ohio courts have determined that there are only two bases for dismissing a declaratory judgment claim: "(1) no real controversy or justiciable issue exists between the parties; or (2) the declaratory judgment will not terminate the uncertainty or controversy." *Weyandt v. Davis*, 112 Ohio App.3d

[12] Notably, the *Clyde* decision's classification of the statute as an exercise of police power does not turn on whether the statute is restrictive or imposes penalties. *See Clyde* at ¶ 50.

717, 721, 679 N.E.2d 1191 (9th Dist.1996); *accord Home Builders Ass'n of Dayton & the Miami Valley v. City of Lebanon*, 12th Dist. Warren No. CA2003-12-115, 2004-Ohio-4526, ¶ 13. Neither is present here.

First, this case involves a real, justiciable controversy. "'A real, justiciable controversy is a "genuine dispute between parties having adverse legal interest of sufficient immediacy and reality to warrant the issuance of a declaratory judgment."'" *Chojnacki v. Mohr*, 2018-Ohio-1167, 110 N.E.3d 689, ¶ 15 (9th Dist.), quoting *Kuhar v. Medina Cnty. Bd. of Elections*, 9th Dist. Medina No. 06CA0076-M, 2006-Ohio-5427, ¶ 14; *accord Burger Brewing Co. v. Liquor Control Comm'n, Dep't of Liquor Control*, 34 Ohio St.2d 93, 97, 296 N.E.2d 261 (1973). Put differently, a real, justiciable controversy is one that presents a danger or dilemma to the plaintiffs and that is not based on "'the happening of hypothetical future events.'" *Waldman v. Pitcher*, 2016-Ohio-5909, 70 N.E.3d 1025, ¶ 26 (1st Dist.), quoting *Mid-Am. Fire & Cas. Co. v. Heasley*, 113 Ohio St.3d 133, 2007-Ohio-1248, ¶ 9. The parties here genuinely dispute the legal validity of the Ordinance, and their interests in this dispute are unmistakably adverse. Additionally, the controversy is immediate and real: The Ordinance has already taken effect (*see* Compl. Ex. 1) and is currently interfering with Plaintiffs' abilities to attend and participate in City Council meetings. Compl. ¶¶ 6, 46, 48, 51–53, 55–59. That is, Plaintiffs are already facing a dilemma over whether to refrain from participating in City Council meetings or face the increased risk of physical harm and armed intimidation, along with the attendant fear and anxiety, posed by concealed firearms. As a result, two Plaintiffs have already stopped attending the meetings, and the third has curtailed her participation. *See id.* Plaintiffs' case is not premised on any hypothetical future events.

For this reason, Lebanon's citation to *Kuhar* for the proposition that courts "do not have the authority to issue advisory opinions to prevent future disputes" (MTD at 20) is inapposite.

There, the plaintiff lacked standing because he "ha[d] not asserted and, in fact, denie[d]" suffering a particularized injury sufficient to establish a justiciable controversy. *Kuhar* at ¶ 15. Here, by contrast, Plaintiffs have specifically alleged that they are particularly harmed by the Ordinance, which chills their engagement in City Council meetings. Carol Donovan and David Iannelli no longer attend City Council meetings due to their prohibitive fear, concern, and anxiety related to the presence of firearms. Compl. ¶¶ 48, 52-55. Brooke Handley experiences fear and discomfort while attending City Council meetings, and weighs the risks associated with concealed firearms when deciding whether and how to speak to the Council; on one occasion, she decided not to speak at all. Compl. ¶¶ 57–58. Because Plaintiffs are presently suffering particularized injuries, this Court's ruling will in no sense be advisory.

Second, Lebanon does not dispute that a declaratory judgment would "terminate the uncertainty" by resolving whether the Ordinance is invalid under state law. *Weyandt*, 112 Ohio App.3d at 721; s*ee* MTD at 20–21. Accordingly, there is no basis to dismiss Plaintiffs' request for a declaratory judgment.

Lebanon asserts that the allegations about concealed firearms in City Council meetings are "irrelevant" to Plaintiffs' case. MTD at 21. On the contrary, these allegations are at the heart of the Complaint. *See, e.g.*, Compl. ¶¶ 1–6. Indeed, elsewhere in their motion, Lebanon recognizes that "Plaintiffs are seeking to vindicate and remedy their own personal rights . . . as they relate to [Plaintiffs'] attendance at future meetings of the Lebanon City Council." MTD at 6. Plaintiffs' injuries, which Lebanon cites extensively (*see* MTD at 6–7), are directly traceable to Lebanon's promulgation of the Ordinance in violation of Ohio's prohibition on weapons within the City

Building, and would be redressed by a ruling from this court that the Ordinance is invalid.[13]

In the words of the Ohio Supreme Court, "standing is not a technical rule intended to keep aggrieved parties out of court." *Moore*, 2012-Ohio-3897, at ¶ 47. Instead, it is meant to ensure that "'judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.'" *Id.*, quoting *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 486, 815 A.2d 1188 (2003). That purpose is indisputably met here, and Plaintiffs have standing to seek a declaratory judgment.

V. Plaintiffs Have Stated a Claim for Declaratory Judgment

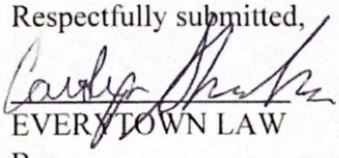
Finally, Defendants' argument on the merits relies on their previously-discussed contentions that the Ordinance is an exercise of local self-government that does not conflict with state law. *See* MTD at 21. As detailed above, these contentions are meritless. *See supra* Part III.

CONCLUSION

For the foregoing reasons, Plaintiffs have alleged municipal taxpayer and declaratory judgment claims, and the Court should deny Lebanon's Motion to Dismiss.

June 16, 2021

Respectfully submitted,



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[13] Lebanon also seems to argue that Plaintiffs have not invoked any rights that are impaired by the Ordinance. *See* MTD at 20. But Plaintiffs have invoked their right to observe the proceedings of, and be heard by, their City Council. *E.g.*, Compl. ¶ 5; *compare Wilkins v. Village of Harrisburg*, 10th Dist. Franklin No. 12AP-1046, 2013-Ohio-2751, ¶ 12 (referring to "the public's right to observe public officials as they conduct official business" under Ohio's Sunshine Law); *State ex rel. Mason v. State Emp. Relations Bd.*, 133 Ohio App.3d 213, 218, 727 N.E.2d 181 (10th Dist.1999) (same, and referring to that right as a "bedrock of our society").

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The undersigned hereby certifies that the foregoing Opposition to Defendants' Motion to Dismiss the Complaint has been served by electronic mail on the following counsel of record, this 16th day of June, 2021:

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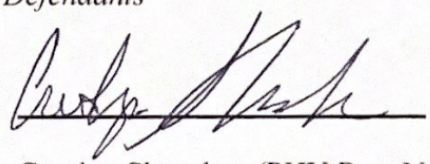

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