IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

CAROL DONOVAN, DAVID IANNELLI, and BROOKE HANDLEY, ***Plaintiffs,*** **v.** **CITY OF LEBANON and MARK YURICK, in his official capacity as City Attorney of the City of Lebanon,** ***Defendants.***	**Case No. 21 CV 94117** **Judge Tepe** **Magistrate Moll** **Oral Argument Requested**

MEMORANDUM CONTRA
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT,
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LOCAL RULE 7.10(A)(6) SUMMARY

Plaintiffs here assert two legal claims—a taxpayer claim pursuant to R.C. 733.59 and a declaratory judgment claim. They seek an injunction and declaration against Lebanon Ordinance No. 2020-022 (the "Ordinance"), which permits individuals to carry concealed handguns into the Lebanon City Building except during Municipal Court functions. The merits of both claims turn on the same legal question: whether Defendant City of Lebanon exceeded its constitutional home-rule authority in enacting the Ordinance. As demonstrated in Plaintiffs' corresponding Motion for Summary Judgment, the answer is clear under the well-established home-rule standard: The Ordinance, which is an exercise of Lebanon's police power, conflicts with general Ohio statutes that prohibit deadly weapons, including firearms, in buildings or structures containing courtrooms. Pls.' Mot. for Summary Judgment ("Pls.' Mot.") 9-18; *see* R.C. 2923.123 and 2923.126(B)(3). State law therefore must prevail. As detailed herein, Defendants' attempt to counter this straightforward home-rule analysis relies on a strained reading of state law, inapposite statutory and case law authority, and a misapplication of the noscitur a sociis canon of statutory construction.

With regard to the R.C. 733.59 taxpayer claim, Defendants' Motion for Summary Judgment does not challenge Plaintiffs' standing. Thus, Plaintiffs' taxpayer claim—which is an independent and sufficient basis to grant Plaintiffs relief—is ripe for a decision on the merits.

Defendants do challenge Plaintiffs' standing to assert their declaratory judgment claim. But, as detailed in Plaintiffs' Motion (at 8, 19-20) and herein, the record demonstrates that the Ordinance has chilled Plaintiffs' participation in Lebanon City Council meetings, which are held in the City Building. Thus, the controversy between the parties is real and justiciable.

In a meritless effort to undermine Defendants' standing on their declaratory judgment claim, Defendants assert, incorrectly, that Plaintiffs have misrepresented the factual record. In doing so, Defendants themselves distort the record. For instance, Defendants claim that Plaintiffs misleadingly

omitted the fact that Plaintiff Brooke Handley's City Council meeting attendance increased in 2020, following enactment of the Ordinance. Defs'. Mot. for Summary Judgment ("Defs.' Mot.") 7-8. But Plaintiffs noted Ms. Handley's increased attendance *in the Complaint.* Compl. ¶ 56. At the same time, Ms. Handley has curtailed her participation in City Council meetings; as a direct result of her fear that other attendees will be armed, Ms. Handley has already refrained from exercising her right to speak at City Council meetings on an issue of importance to her. Similarly, Defendants take deposition testimony by Plaintiff David Iannelli out of context, in a failed attempt to obscure the material and undisputed facts concerning his very real and immediate concerns about guns in City Council meetings.

BACKGROUND

Plaintiffs laid out the material facts in their own Motion for Summary Judgment. To avoid duplicative briefing, Plaintiffs focus here on clarifying the record.

Defendants fixate on Everytown, the origins of Everytown's relationship with Plaintiffs, and Plaintiffs' past attendance at City Council meetings. Defs.' Mot. 3-4, 6-8. Of these topics, only the last is in any way arguably relevant to the resolution of this case, and even then only to Plaintiffs' standing to raise their declaratory judgment claim. Nevertheless, Plaintiffs cannot allow Defendants' misstatements and distortions of the record to stand; accordingly, Plaintiffs address the genesis of this litigation and the facts with respect to the connection between the Ordinance and Plaintiffs' attendance at City Council meetings in the section that follows, and leave the rebuttal of the false and irrelevant claims about Everytown to a footnote at the end of that section.

A. This Case Arose Out of Local Opposition to the Ordinance

Defendants' inaccurate and irrelevant claim notwithstanding, the genesis of this case lay in local opposition to the Ordinance, and not an "anti-gun rights effort[.]" Defs.' Mot. 3, 6-7. Attorney

J. William Duning, who represents Plaintiffs here along with Everytown Law, is a partner at Gray & Duning, a well-respected firm located in Lebanon.[1] Like Plaintiffs, Mr. Duning is a longtime resident of Lebanon, and an engaged member of the community. As the deposition testimony reflects, during the period before and after the Ordinance's enactment in 2020, Ms. Handley, Ms. Donovan, and Mr. Duning were part of conversations regarding the Ordinance as Lebanon citizens; Mr. Duning—as a practicing attorney with decades of experience—was equipped the identify the potential for a legal challenge. *See, e.g.*, Handley Dep. 66:22-67:17, 160:1-13, 161:14-162:11, 162:22-163:15, 164:18-166:13; Donovan Dep. 110:10-112:20, 135:24-137:24; Iannelli Dep. 73:4-10, 73:20-74:16. Mr. Duning connected Plaintiffs with Everytown Law, which could offer its specialized expertise. *See* Handley Dep. 90:16-22 (Mr. Duning connected Ms. Handley with Everytown); Donovan Dep. 134:18-23 (similar). The instant litigation is not—as Defendants contend—a campaign started by an "anti-gun" organization.[2]

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[1] Gray & Duning, https://www.grayandduning.com/ (accessed Sep. 13, 2022).

[2] Presumably in an effort to distract the Court and smear Plaintiffs by association, Defendants describe Everytown Law as an "anti-gun organization." Defs.' Mot. 3, 6-7. This is both inaccurate and irrelevant. Everytown Law is the litigation arm of Everytown for Gun Safety Support Fund, which, along with the Everytown for Gun Safety Action Fund (both not-for-profits and collectively, "Everytown"), is a gun *violence* prevention organization—not an anti-gun organization. *See Everytown for Gun Safety*, https://www.everytown.org/(accessed Sep. 13, 2022). In service of its mandate, Everytown identifies and advocates for evidence-based solutions to prevent gun violence—including armed intimidation. *See Solutions*, https://www.everytown.org/solutions/ (accessed Sep. 13, 2022); *Ending Armed Assaults on Democracy*, https://www.everytown.org/report/ending-armed-protests/ (accessed Sep. 13, 2022). Everytown's supporters include gun owners across the nation. In fact, Everytown has developed guides for gun owners, based on research establishing that secure storage and other best practices can reduce the risk of gun violence, including in the home. *See, e.g.*, *Secure Gun Storage*, https://www.everytown.org/solutions/responsible-gun-storage/ (accessed Sep. 13, 2022). In other words, Everytown's mission to end gun violence includes advocating for responsible gun ownership. *See Responsible Gun Ownership*, https://www.everytown.org/issues/responsible-gun-ownership/ (accessed Sep. 13, 2022).

Defendants further assert that Everytown's "agenda" is "out of line with recent action by Ohio's elected policy makers," and take issue with Everytown's overview of Ohio's gun safety laws. Defs.' Mot. 3, 6, citing *Ohio*, https://www.everytown.org/state/ohio/. This is a curious position, given that Plaintiffs here seek to enforce, and not to change, Ohio law. In any event, clarification is

B. Plaintiffs Have Not Misstated the Factual Record

Defendants claim that Plaintiffs have made misleading allegations in the Complaint and in Plaintiffs' Opposition to Defendants' Motion to Dismiss regarding the connection between the passage of the Ordinance and Plaintiffs' attendance at and participation in City Council meetings. Defs.' Mot. 7-9, 29-30. This is incorrect, and indeed it is Defendants who have misrepresented the record. As alleged by the Complaint—and, more importantly, as supported by the record before this Court now, on summary judgment—the Ordinance currently chills the participation of Plaintiffs Brooke Handley and David Iannelli in City Council meetings, though in different ways. Ms. Handley continues to attend the meetings, but feels fear when doing so and has already declined to exercise her right to speak to the City Council about an issue of importance to her because of that fear. Mr. Iannelli's desire to attend meetings is chilled by his fear about the presence of firearms. Plaintiffs address the Ordinance's individual effects on both Plaintiffs below.[3]

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warranted: The Ohio overview cited by Defendants reflects a larger study published by Everytown that compared gun safety laws and gun violence rates across all 50 states. *Everytown Gun Law Rankings*, https://everytownresearch.org/rankings/ (accessed Sep. 13, 2022). Everytown's classification of Ohio as a state with weak gun safety laws and a relatively high gun death rate reflects facts, not a political judgment. It is grounded in the data and methodology underlying the larger study, which revealed an inverse correlation between the strength of a state's gun safety laws and its gun death rate. *Id.*; *see also Methodology*, https://everytownresearch.org/rankings/methodology/ (accessed Sep. 13, 2022).

[3] Plaintiff Carol Donovan has submitted a Notice of Voluntary Dismissal of her claims, based on her recent change in residence. *See* Notice of Voluntary Dismissal (Aug. 25, 2022). Were she still a part of the case, the Ordinance's interference with her participation would likewise be supported by the record. Ms. Donovan is a survivor of domestic violence, perpetrated by both her father and her ex-husband. Donovan Dep. 95:14-104:2. She has seen firsthand how the presence of firearms can exacerbate a threat and escalate a conflict. Donovan Dep. 97:2-6, 99:10-12. As a natural result of that experience, she has been afraid and intimidated to attend City Council meetings where guns may be present: "[I]n my opinion, myself, along with other people like me, are being intimidated to an extent that we cannot participate in any kind of city conversation or city meeting without that—that question in the back of your head, who's up there packing right now?· Who behind me is packing right now? Not everyone's been through trauma like I have, but we don't know that. We don't know. I always like to assume that maybe there are more like me." Donovan Dep. 120:12-22; *see also id.* at 38:6-9, 99:10-12, 118:5-119:14. Prior to the Ordinance, other life circumstances had left Ms. Donovan little

1. Brooke Handley

Ms. Handley has lived in the 45036 zip code for most of her life, including 11 years in Lebanon. Handley Dep. 10:20-24. She estimates that, in 2019, she attended approximately three City Council meetings. Handley Dep. 78:19-21; *see* Compl. ¶ 56. In both 2020 and 2021, her attendance increased. Handley Dep. 78:22-79:18. Defendants contend that this increase in Ms. Handley's attendance in 2020 is "[c]ontrary to the allegation by Plaintiffs' Attorneys." Defs.' Mot. 8. But Plaintiffs alleged Ms. Handley's increased attendance *in the Complaint.* Compl. ¶ 56.

Moreover, as both alleged in the Complaint and testified to by Ms. Handley, she now experiences fear when attending City Council meetings and has curtailed her participation. Handley Dep. 69:9-24; Compl. ¶¶ 57-59. Ms. Handley noted that, "for the past couple of years especially, there has been a very large number of controversial issues that have been discussed at city council." Handley Dep. 69:13-19. Ms. Handley believes that adding firearms to a contentious meeting, among passionate and even angry people, creates a potentially dangerous situation. Handley Dep. 69:18-24; Compl. ¶ 59. Due to her concern about the presence of guns, Ms. Handley does not always feel free to exercise her

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time to attend City Council meetings. *See* Donovan Dep. 74:6-75:16; 113:15-115:7. After the Ordinance, any possibility of attendance is laced with fear. She has only attended one City Council meeting since the Ordinance passed, and she did so at the request of a friend (and several months after Plaintiffs submitted their Opposition to Defendants' Motion to Dismiss). Donovan Dep. 115:15-21, 178:23-174:1. During that meeting, Ms. Donovan felt guarded and ill at ease, which had never been the case when attending City Council meetings prior to the Ordinance. Donovan Dep.179:4-15. She purposely sat in the back of the room, closest to the door, both because of some mobility issues and in case a bad situation developed and escalated. Donovan Dep. 178:1-179:15.

Defendants also cite the Complaint allegation regarding Ms. Donovan's intent to attend firearms training with her son, a law enforcement officer. Defs.' Mot. 8, quoting Compl. ¶ 49. As Ms. Donovan testified, she has not done so yet. Donovan Dep. 150:20-151:2. The fact that Ms. Donovan has not attended firearms training is not inconsistent with her *intent* to do so at the time of the Complaint filing. Furthermore, whether or not she pursued that intent would have been immaterial to her claims.

right to speak to the City Council. Handley Dep. 170:22-171:21; *see also* Handley Aff. ¶ 6, 9.[4] For instance, during her deposition, Ms. Handley recalled attending a May 2021 meeting regarding the sanctuary city ordinance ultimately passed by the City Council. Handley Dep. 171:11-21. The meeting lasted several hours and many people on both sides of the issue. Handley Dep. 171:11-21. But she decided not to speak, despite caring deeply about the issue, because of her fear that people in that crowded meeting were carrying guns. Handley Dep. 171:11-21; Handley Aff. ¶ 6. And even when the sanctuary ordinance was discussed at subsequent meetings over the next six months, Ms. Handley refrained from speaking up due to her fear about people carrying guns. Handley Aff. ¶¶ 7-8.[5]

Ms. Handley has thus curtailed her participation in City Council meetings, as Plaintiffs argued in their Opposition to Defendants' Motion to Dismiss. *See* Pls.' Opp'n. to Defs.' Mot. to Dismiss ("Pls.' MTD Opp.") 18. Ms. Handley opposes the Ordinance because she believes every citizen, including herself, should be able to participate in city government and voice their opinions freely without fear of violence or retribution. Handley Dep. 65:25-67:2.

2. David Iannelli

Defendants also incorrectly contend that the record does not support Plaintiffs' allegations regarding the Ordinance's effect on Mr. Iannelli's participation in City Council meetings. Defs.' Mot. 8, 30.

Mr. Iannelli has worked as a music educator for Lebanon City Schools since 1994. Iannelli Dep. 9:9-13, 9:20-10:1; Defs.' Mot. 8. Until 2018, Mr. Iannelli led the Lebanon marching band, and his career took up much of his time. Iannelli Dep. 14:4-12; 66:24-67:4. Mr. Iannelli estimates that, until

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[4] Citations to the "Handley Aff." and the "Iannelli Aff." refer to the Affidavits of Brooke Handley and David Iannelli, submitted herewith.

[5] In addition to deciding not to speak about the May 2021 sanctuary city ordinance, Ms. Handley also chose not to speak at an earlier City Council meeting, as alleged in the Complaint. Compl. ¶ 58.

he stepped back from the marching band in 2018, he regularly worked 14 hours per day for 11 months of the year. Iannelli Dep. 66:24-67:2; Iannelli Aff. ¶ 5. Prior to 2018, he had attended approximately 5 to 10 City Council meetings. Iannelli Dep. 54:12-56:13; Compl. ¶ 51. On most of those occasions, he attended with the marching band; on a few occasions, he attended meetings where topics of interest to him were discussed. Iannelli Dep. 54:12-56:13; Compl. ¶ 51. As Mr. Iannelli explained during his deposition, however, he generally did not have time to attend meetings due to his work schedule. Iannelli Dep. 66:24-67:4; *see also* Iannelli Aff. ¶ 13.

After retiring from the marching band in 2018, Mr. Iannelli determined that he would like to attend City Council meetings more regularly, because he wants to be more involved in the community and because he may want to open a business in Lebanon in the future. Iannelli Dep. 67:5-7, 67:12-17; Compl. ¶ 52. His immediate focus, however, was to spend time with his family and recover from a grueling period of his career, which had adversely impacted his health. Iannelli Dep. 67:5-11; Iannelli Aff. ¶¶ 6-7.

Now that he is a few years out from scaling back his work schedule, Mr. Iannelli is in a better position to attend City Council meetings. Iannelli Aff. ¶¶ 8-16. But, as Mr. Iannelli testified in his deposition, "[c]ity council meetings can get pretty contentious and emotional and volatile[,]" and he believes that carrying a gun "could create a very, very rough situation." Iannelli Dep. 54:6-9; *see also* Iannelli Aff. ¶¶ 10-12. He is concerned that someone will bring a gun to a City Council meeting and use it. Iannelli Dep. 65:24-66:2. He is aware of City Council meetings in the past that have become "hot under the collar" with "[a]rguing and yelling," and believes that, after the Ordinance, "having [a] gun there just makes it a little bit more dangerous." Iannelli Dep. 61:19-23, 62:3-5, 65:15-17; *see also* Iannelli Aff. ¶¶ 10-12. He testified in his deposition that a gun is "another tool to reach towards or reach for or access if you're not thinking clearly"—that is, "having a gun on your hip is just another tool to be violent"—and "you're going to be able to use the gun if it's there." Iannelli Dep. 63:3-5,

65:10-13. When asked how a gun differs from other potential weapons—such as chairs, fists, or phone cords—Mr. Iannelli explained that a gun can "pierce the skin" and "it's a whole lot easier to subdue somebody with a telephone cord than a gun." Iannelli Dep. 63:9-10, 66:18-20. Even when he spends time in social environments in Lebanon, the potential presence of guns is "in the back of [his] mind" and he is "not as relaxed" as he would otherwise be. Iannelli Dep. 70:17-71:5.

Defendants focus on one question and answer from Mr. Iannelli's deposition. Defs.' Mot. 8. They contend that Mr. Iannelli's response to the question "And why do you not go to city council meetings" (Iannelli Dep. 66:22-67:17), which did not mention the Ordinance, undercuts Plaintiffs' allegations regarding the Ordinance's chill on his participation in City Council meetings. Defs.' Mot. 8. But read in context of his testimony, Mr. Iannelli's response makes sense. Immediately prior to that question, and as detailed above, Mr. Iannelli had discussed his concerns that City Council meetings are not entirely safe, that the presence of guns could escalate a contentious or volatile meeting, and that someone will bring a gun to a City Council meeting and use it, perhaps while "not thinking clearly." Iannelli Dep. 54:6-9, 63:16-66:20; *see also* Iannelli Aff. ¶¶ 10-12, 17; Compl. ¶ 53. Thus, at the time of the question highlighted by Defendants, his understanding was that it was already clear from his prior testimony that he is currently afraid to attend meetings. Iannelli Aff. ¶¶ 14, 16, 18. And previously in the deposition he had already explained his City Council meeting attendance prior to his marching band retirement in 2018. *See* Iannelli Dep. 54:12-56:13; Iannelli Aff. ¶¶ 13-14. But he had not yet explained his lack of City Council meeting attendance during the period between his marching band retirement (2018) and the passage of the Ordinance (March 2020). Iannelli Aff. ¶ 15. In the answer highlighted by Defendants, he filled in that gap. *Id.* He explained that, following his marching band retirement, his focus was on his family. Iannelli Dep. 66:24-67:17. And then, in March 2020, around the time the Ordinance passed, Covid-19 closures began to prevent in-person meeting attendance. *Id.* His answer ended around the point in time when the Ordinance was introduced, and

the testimony then switched topics. Iannelli Dep. 67:18-21; Iannelli Aff. ¶ 15.

To be as clear as possible, and for the avoidance of doubt: Mr. Iannelli is concerned and afraid that a City Council meeting where guns are present could become violent. Iannelli Dep. 54:6-9, 63:16-66:20; Iannelli Aff. ¶¶ 10-12, 16-18. That is, the Ordinance currently chills his attendance at City Council meetings. Iannelli Aff. ¶¶ 16-18.[6]

In sum, Plaintiffs Handley's and Iannelli's City Council meeting participation is currently chilled by the Ordinance, and the parties' controversy is real and immediate.

C. Defendants' Unilateral Designation of the Courtroom as a "Multipurpose Room" Does Not Make It So

For purposes of this litigation, Defendants debut a new "multipurpose room" designation for the courtroom. *See, e.g.*, Defs.' Mot. 11-15, 22-23. Their unilateral use of that term does not change the fact that, even by their own account, the courtroom's primary use is for court proceedings. Defs.' Mot. 11-13 (acknowledging that the Municipal Court regularly holds formal proceedings three days per week in the courtroom, while the City Council, Lebanon Planning Commission, and Lebanon Board of Zoning Appeals meet for only a combined four evenings per month in the courtroom); Pls.' Mot. 4-5 (describing the Municipal Court's daily operations). Nor does the record reflect any preexisting practice of referring to the courtroom as a "multipurpose room." There are no signs in the City Building that identify the courtroom as a "multipurpose room." Brunka Dep. 96:9-16. Every permanent sign in the City Building identifies the courtroom as the courtroom or court. Brunka Dep. 97:1-6. During the February 4, 2020, work session of the Lebanon City Council, at which the

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[6] While Plaintiffs acknowledge that they could have been more precise in early briefing on the motion to dismiss in explaining how the passage of the Ordinance is chilling Mr. Iannelli's current desire to attend City Council meetings (as opposed to the Ordinance being the reason he stopped his prior attendance), for purposes of assessing his standing to seek a declaratory judgment now, on summary judgment, this is a distinction without a difference, because the impact on his current desire to attend is both supported by the record and legally sufficient.

Ordinance was most discussed, Defendant Mark Yurick referred to the courtroom as a courtroom. Pls. Ex. I at DONOVAN0159 ("Although, on Tuesday, there's a civil docket; and that's outside of other times that the courtroom is used as a courtroom.")[7]

More to the point, Defendants' unilateral use of the term "multipurpose room" does not change the plain meaning of state law, which prohibits firearm possession in any "building or structure in which a courtroom is located." R.C. 2923.123 and 2923.126(B)(3). The state law prohibition covers the City Building at all times. Pls.' Mot. 11-15; *infra* at 13-18. Contrary to Defendants' assertion (Defs.' Mot. 11-13, 19-20), the fact that activities other than court proceedings occur in the municipal courtroom does not make it less of a courtroom within the meaning of state law. It is not uncommon for courtrooms or courthouses to host events and functions when court is not in session. For example, on the day of his deposition, Mr. Yurick attended a Warren County Bar Association meeting "at the Warren County Courthouse in the grand jury room." Yurick Dep. 16:21-17:1. He did not say that the meeting was in a "multipurpose room that is sometimes used as a grand jury room." The grand jury room in the Warren County Courthouse is always a grand jury room, even when grand jury proceedings are not occurring. The Warren County Courthouse is always a courthouse, even when it hosts a bar association meeting. And the courtroom in the Lebanon City Building is always a courtroom, even when the Municipal Court is not holding proceedings.

The courtroom in the Lebanon City Building contains the standard appurtenances of

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[7] Plaintiffs' Exhibit I, attached to the Attorney Affidavit of Laura Keeley submitted in support of Plaintiffs' Motion for Summary Judgment, is an excerpted transcript of the audio recording of the February 4, 2020, Lebanon City Council work session. The full audio recording is available on the City of Lebanon's website at https://www.lebanonohio.gov/government/agendas___minutes/city_council_work_session_meeting_agendas___minutes/2020.php. *See* Keeley Aff. ¶ 10; *see also* 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/ (accessed Sep. 13, 2022) ("The *courtroom* is used for court sessions and most city council meetings." (Emphasis added.))

courtrooms—including a jury box, counsel tables, a public gallery, a bench—and those features remain regardless of whether court is in session or a City Council meeting is taking place. Hubbell Dep. 26:17-25. Defendants make much of the hydraulic lift used to adjust the height of the bench (Defs.' Mot. 14), but the bench remains elevated above the rest of the room, even when the hydraulic lift function is not engaged. *See* Pls. Ex. F (depicting the elevated bench during a City Council meeting, when the hydraulic lift is not engaged). The ability to adjust the height of the bench does not make it any less of a bench. Nor do the audio-visual and security set-ups within and outside the courtroom (Defs.' Mot. 13-15) bear on whether it constitutes a courtroom for purposes of state law, and Defendants cite no authority to suggest otherwise.

Defendants' use of the term "multipurpose room" in this litigation does not change the truth of the matter: the courtroom in the Lebanon City Building is a courtroom.

D. Plaintiffs' Personal Beliefs Are Irrelevant to Their Legal Claims

Defendants also take issue with Ms. Handley's and Mr. Iannelli's personal political beliefs, particularly regarding firearms. Defs.' Mot. 9-10, 30. But Defendants presumably do not mean to suggest that the Court should base its decision on Plaintiffs' beliefs. Plaintiffs' personal political views have no bearing whatsoever on their legal claims.

As Defendants note, both Ms. Handley and Mr. Iannelli believe that the right to carry concealed handguns in public, provided by Ohio law, is too broad. *See* Iannelli Dep. 33:6-9; Handley Dep. 96:12-97:12. But they are not challenging Ohio's concealed carry regime. Instead, they challenge only the Ordinance, which adversely affects them and is contrary to Ohio law. In short, the narrow scope of Plaintiffs' claims puts paid to Defendants' attack; they are clearly *not* using this lawsuit as a

vehicle to enforce their personal political views.[8]

LEGAL STANDARD

"The basic standard for summary judgment has been well established in Ohio jurisprudence." *Todd Dev. Co., Inc. v. Morgan*, 116 Ohio St.3d 461, 2008-Ohio-87, 880 N.E.2d 88, ¶ 13. Trial courts look "at the evidence as a whole" and only grant summary judgment where "'(1) No genuine issue of material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence, construed most strongly in favor of the nonmoving party, that reasonable minds could only conclude in favor of the moving party.'" *Sinnott v. Aqua-Chem, Inc.*, 116 Ohio St. 3d 158, 2007-Ohio-5584, 876 N.E.2d 1217, ¶ 13, quoting *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679, 686–687, 653 N.E.2d 1196 (1995). Considering the evidence most strongly in favor of Plaintiffs, the nonmoving party, and the applicable law, the Court should deny Defendants' Motion.

ARGUMENT

The general Ohio laws at issue in this case are clear. *See* Pls.' Mot. 3-4, 11. There shall be no deadly weapons, including firearms, in courthouses or other buildings containing courtrooms. R.C. 2923.123(A)-(B) and 2923.126(B)(3). This prohibition covers not just handguns but all manner of firearms, as well as ballistic knives, bombs, grenades, and other explosive devices. *See* R.C. 2923.11(A), (K). Violation of this prohibition is a felony. R.C. 2923.123(D). There are no time limitations on this prohibition; it is always in effect.

Regarding concealed handguns, Ohio law generally allows qualified individuals to carry "anywhere in this state," with several enumerated exceptions for certain sensitive places. One such exception reaffirms the prohibition in R.C. 2923.123, providing that qualified individuals shall *not*

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[8] Former Plaintiff Donovan's political views further disrupt Defendants' narrative. She supports permitted concealed carry for personal protection. Donovan Dep. 34:10-14, 107:1-15; *see also* Handley Dep. 88:3-11 (Ms. Handley and Ms. Donovan, in general, do not have similar political views).

"carry a concealed handgun into . . . [a] courthouse or another building or structure in which a courtroom is located." R.C. 2923.126(B)(3). There are no time limitations in this statute, either. Local governments have discretion to permit concealed handguns within some government buildings, but Ohio law expressly *excludes* courthouses and buildings containing courtrooms from that discretion. R.C. 2923.126(B)(7). Again: No firearms in courthouses and buildings containing courtrooms.[9]

Plaintiffs here assert a taxpayer claim pursuant to R.C. 733.59 and a declaratory judgment claim. Both claims seek relief on the grounds that the Ordinance exceeds Lebanon's constitutional home-rule authority. The Lebanon Ordinance plainly conflicts with the state law, and state law must prevail.

Defendants do not challenge Plaintiffs' standing to pursue their taxpayer claim. As detailed herein and in Plaintiffs' Motion for Summary Judgment, the record and applicable law support summary judgment on the merits of that claim. Likewise, the record demonstrates Plaintiffs' standing to assert their declaratory judgment claim, and Plaintiffs are entitled to declaratory relief.

A. The Ordinance Exceeds Lebanon's Home-Rule Authority

The Parties agree on the proper test for evaluating whether a municipality has exceeded its home-rule authority: "A state statute takes precedence over a local 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 (3) the statute is a general law." *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963¶ 9; *accord* Defs.' Mot. 17. All three factors are met here.

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[9] Defendants miss the mark in suggesting that the United States Supreme Court's recent decision in *New York State Rifle & Pistol Assn. v. Bruen*, ___ U.S. ___, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022), supports their position. In fact, in *Bruen*, the six-Justice majority opinion clearly reaffirmed as "settled" law that prohibitions on the carrying of firearms in courthouses and government buildings are "consistent with the Second Amendment." *Id.* at 2133.

1. The Ordinance Conflicts with State Statutes

i. Defendants' Strained Construction of State Law is Unsupported by Their Cited Legal Authority

Plaintiffs outlined the clear conflict between the Ordinance and state law in their Motion for Summary Judgment. *See* Pls.' Mot. 11-15. The conflict flows from the straightforward, natural reading of the unambiguous state statutes, which do not permit firearms in the City Building at any time. The state statutory scheme makes exceptions for certain *individuals*, such as judges, bailiffs, and law-enforcement officers, R.C. 2923.123(C), but makes no exceptions based on the time of day or the activities occurring in the courtrooms. In an effort to side-step this conflict, Defendants offer a tortured reading of state law that violates the rules of statutory interpretation. Defs.' Mot. 20-24. In doing so, Defendants reproduce many of the arguments from their unsuccessful Motion to Dismiss. *See* Defs.' Mot. to Dismiss 8-15. Defendants contend that "[t]his case raises the question how temporally a courtroom constitutes a courtroom when the venue in which court is held is a multipurpose room also utilized for other governmental functions." Defs.' Mot. 19. But Ohio law does not contemplate *any* temporal limitation on the prohibition of handguns in a building with a courtroom, as is clear from the plain text of the applicable statutes. The Ohio Judicial Conference's model jury instruction for R.C. 2923.123 further reinforces the plain text of the statute. Specifically, it does *not* include any instruction to jurors to consider whether the relevant court was operating at the time of the alleged violation:

> The defendant is charged with illegal (conveyance) (possession) (control) of a (deadly weapon) (dangerous ordnance) in(to) a courthouse. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the _____ day of _____, 20_____, and in _____ (County) (*other jurisdiction*) Ohio, the defendant knowingly (conveyed) (attempted to convey) ([possessed] [had under his/her control]) a (deadly weapon) (dangerous ordnance) in a (courthouse) ([building] [structure] in which a courtroom was located).

Ohio Jury Instructions, CR Section 523.123 (Rev. Jan. 20, 2018). The model instruction directs that a defendant is guilty if the defendant knowingly has/brings a deadly weapon (including a handgun) into a building in which a courtroom was located, period. *See id.*

Simply put, Defendants read into state law a temporal limitation that is not there. Courts, however, must apply unambiguous statutes as written and "give effect to the words used, refraining from inserting or deleting words." *In re Foreclosure of Liens for Delinquent Land Taxes*, 140 Ohio St.3d 346, 2014-Ohio-3656, 18 N.E.3d 1151, ¶ 12, citing *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St.3d 50, 53-54, 524 N.E.2d 441 (1988). Courts "'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, 75 N.E.3d 203, ¶ 8, quoting *Morgan v. Adult Parole Auth.*, 68 Ohio St.3d 344, 347, 626 N.E.2d 939 (1994); *see also id.* ("If we were to brazenly ignore the unambiguous language of a statute, or if we found a statute to be ambiguous only after delving deeply into the history and background of the law's enactment, we would invade the role of the legislature: to write the laws.").

In their Motion for Summary Judgment, Plaintiffs detailed how Defendants' reading of state law would lead to unworkable rules and absurd results. Pls.' Mot. 12-15. Plaintiffs will not repeat those arguments here. Instead, Plaintiffs will address the inapposite authority cited by Defendants, in their attempt to bolster their imaginative interpretation of state law. *See* Defs.' Mot. 21-24.

First, Defendants cite R.C. 1901.36 and related case law. *See* Defs. Mot. 21-22. R.C. 1901.36 requires a legislative authority like Lebanon to provide suitable accommodations for its municipal court. *See id.* R.C. 1901.36 sheds no light on the meaning of the word "courtroom" and is, in any event, part of a separate statutory scheme from R.C. 2923.123 and 2923.126. Defendants cite *State ex rel. Cleveland Mun. Court v. Cleveland City Council* for the proposition that "Municipal Courts remain dependent to a reasonable extent upon the legislative authority of the municipality in which they sit,"

34 Ohio St.2d 120, 127, 296 N.E.2d 544 (1973). *See* Defs.' Mot. 22. That case concerned a funding dispute between the Cleveland's Municipal Court and its City Council, and it has no bearing on the issues presented in this case. *See Cleveland Mun. Court* at 124. Likewise irrelevant is *State ex rel. Musser v. Massillon*, 12 Ohio St.3d 42, 465 N.E.2d 400 (1984). *Compare* Defs.' Mot. 23-24. There, the Supreme Court of Ohio ruled that R.C. 1901.36 required a city to provide accommodations for the referee of the municipal court. *Musser* at 45-46. In short, R.C. 1901.36 and case law applying it in the context of funding and resource disputes are immaterial to the unambiguous meaning of the word "courtroom" for purposes of R.C. 2923.123 and 2923.126.

Second, Defendants highlight an inapposite case that explores the differences in authority between a "judge" and a "court." Defs.' Mot. 23, citing *State ex rel. Hawke v. Le Blond*, 108 Ohio St. 126, 133, 140 N.E. 510 (1923). *Hawke* states that a court must be "in session" in order to exercise its authority. *Hawke* at 132-33. Defendants leap to the conclusion that *Hawke* thus mandates that the definition of "court*room*" be limited to periods when "court is in session." Defs.' Mot. 23. This is both illogical and undercut by the record here. The word "courtroom" does not appear anywhere in the *Hawke* decision, and more to the point, Defendant Yurick has publicly opined that the state law prohibition on possessing weapons in buildings with courtrooms extends beyond court sessions and covers all periods of "court functions." Pls. Ex. I at 58:17-19; *accord id.* at 57:12-14. In other words, Mr. Yurick has already acknowledged that the relevant state law prohibition does *not* turn on whether court is "in session."

Finally, Defendants cite *State ex rel. Montgomery Cty. Pub. Defender v. Rosencrans*, 2d Dist. Montgomery No. CA20416, 2005-Ohio-6681, *aff'd*, 111 Ohio St.3d 338, 2006-Ohio-5793, 856 N.E.2d 250. *See* Defs.' Mot. 24. *Rosencrans* is inapplicable to the question at issue here; it concerns the operation of a mayor's court, which is governed by a different statutory scheme, R.C. 1905.01 *et seq.*, and discusses whether state law required that a sound system be turned on for all court proceedings. *See*

Rosencrans at ¶ 2. Nevertheless, *Rosencrans* similarly does not speak to any temporal limitations implicit in the meaning of the word "courtroom."

The Ohio statutes regarding the carrying of handguns into buildings with courtrooms are unambiguous, as is the common, ordinary meaning of the word "courtroom." Pursuant to state law, no guns may be possessed in the City Building, except by individuals specifically exempted from the prohibition. The Ordinance clearly conflicts with state law.

ii. Defendants Misapply the Canon of Noscitur a Sociis

Even if the meaning of the word "courtroom" were ambiguous—and it is not—the canon of of noscitur a sociis, invoked by Defendants (Defs.' Mot. 20-21), would compel the conclusion that state law prohibits deadly weapons in buildings containing a courtroom at all times.

Defendants cite *Inland Prods., Inc. v. Columbus*, which states that "the maxim of noscitur a sociis—it is known from its associates—directs [a court] to look to accompanying words to deduce the undefined word's meaning" *only after* first assigning a word its "plain, ordinary meaning." 193 Ohio App.3d 740, 2011-Ohio-2046, 954 N.E.2d 141, ¶ 25 (10th Dist.); *see also State v. Romage*, 138 Ohio St.3d 390, 2014-Ohio-783, 7 N.E.3d 1156, ¶ 13 ("[Noscitur a sociis] counsels that a word is given a more precise meaning by the *neighboring* words with which it is associated." (Emphasis added.)). Here, in R.C. 2923.123(A), (B) and 2923.126(B)(3), the word "courtroom" is most closely associated with the word "courthouse." *See, e.g.*, R.C. 2923.123(B) (deadly weapons not permitted in "a courthouse or in another building or structure in which a courtroom is located"). There is no temporal limitation on the word "courthouse," and the plain text of the statute makes clear that the prohibition on possessing deadly weapons in courthouses applies at all times. In fact, this Court recently instructed the public that individuals may not possess deadly weapons or dangerous ordnances in courthouses, without any

temporal limitation.[10] In short, Ohio law prohibits deadly weapons in courthouses at all times, even when non-court functions are occurring in a courthouse. Thus, applying noscitur a sociis, it follows that the meaning of the phrase "building or structure in which a courtroom is located" is likewise static and not time-dependent. *See Inland Prods.* at ¶ 25 ("'the coupling of words denotes an intention that they should be understood in the same general sense,'" quoting *Wilson v. Stark Cty. Dept. of Human Servs.*, 70 Ohio St.3d 450, 453, 639 N.E.2d 105 (1994).

Instead of turning to "courtroom's" closest neighbor in R.C. 2923.126(B)(3), Defendants jump to R.C. 2923.126(B)(2), which prohibits the concealed carry of handguns in a "school safety zone." Even in this context, however, applying noscitur a sociis supports Plaintiffs. The term "school safety zone" is defined with a specific cross-reference to another statutory definition of the term "school," which applies "whether or not any instruction, extracurricular activities, or training provided by the school is being conducted . . . at the time a criminal offense is committed." R.C. 2901.01(C)(1) and 2925.01(Q)-(S); *see also* Defs.' Mot. 20. In other words, a school safety zone is always a school safety zone. Likewise, a courtroom is always a courtroom.

Ohio law does not temporally limit its prohibition on carrying firearms within the Lebanon City Building, and the Ordinance thus directly conflicts with Ohio state law.

2. The Ordinance Is an Exercise of Police Power

The Ordinance clearly constitutes an exercise of Lebanon's police power. *See* Pls.' Mot. 15-16. The parties agree that an ordinance "aimed at protecting the public . . . clearly constitute[s] an exercise of police power." Defs.' Mot. 27 (discussing *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92, 880 N.E.2d 906). That is this Ordinance. Defendants nevertheless contend that the

[10] Warren County Court of Common Pleas, *Press Release* (Jun. 2, 2022), https://www.co.warren.oh.us/commonpleas/ConcealCarryCourthouse.pdf ("Despite a new law change, 'qualifying adults' are still prohibited from carrying handguns into courthouses.").

Ordinance constitutes solely an exercise of local self-government, an argument that falls short for two principal reasons.

i. The Ordinance's Express Purpose is to Protect the Safety, Health, and Welfare of the Public

A municipal ordinance is an exercise of police power when it "'protect[s] the public health, safety, or morals, or the general welfare of the public.'" *Ohioans for Concealed Carry, Inc. v. Clyde,* 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶ 30, quoting *Marich* at ¶ 11. Section 2 of the Ordinance states that it is "necessary for the preservation of the public peace, health, safety, morals and welfare of the City of Lebanon." Pls. Ex. A at 1. In *Clyde*, the Supreme Court stated that similar language "clearly supports" the conclusion that an ordinance is an exercise of the police power. *Clyde* at ¶ 37.

Defendants assert that the Ordinance does *not* protect the public or concern the common welfare but instead protects the safety of only the City Council members. Defs.' Mot. 25-26. In support of this argument, Defendants assert that the former City Council member who initially proposed the Ordinance intended it to allow only City Council members to protect themselves during Council meetings. *Id.* at 25. Whether or not that was the original inspiration for the Ordinance, the record is clear that the Ordinance, as enacted, allows any qualified individual to carry a concealed handgun in the City Building. *See, e.g.*, Defs.' Mot. 5-6. Its scope is not limited to City Council members, and its text clearly states its purpose to promote the health, safety, and welfare of the *public.* Pls. Ex. A at 1. Moreover, even if the Ordinance were limited to City Council members (and it is not), Defendants cite no authority for the proposition that the safety and security of city council members is *solely* a matter of self-government that does not implicate the police power. *Compare Am. Fin. Servs. Assn. v. Cleveland,* 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 23 ("If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops . . . . On the other hand, if, as is more

likely, the ordinance pertains to concurrent police power rather than the right to self-government, the ordinance that is in conflict must yield in the face of a general state law.").

ii. *Clyde* Controls: Ordinances Regulating Firearms Possession Are Police Power Ordinances

In a controlling decision, the Supreme Court of Ohio has approved of decisions holding that "local ordinances regulating firearm possession are police-power regulations." *Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, at ¶ 34. The *Clyde* decision relies in turn on the Supreme Court's 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, 795 N.E.2d 633, ¶ 13. The Ordinance, which regulates the possession of firearms within the City Building, fits squarely within this police power framework.

Despite *Clyde*'s clear language, Defendants contend that it is distinguishable. The ordinance at issue in *Clyde* prohibited licensed handgun owners from carrying concealed handguns in Clyde city parks. *Clyde* at ¶ 1. Defendants assert first that, unlike the *Clyde* ordinance, the Ordinance at issue here is not aimed at protecting public health, safety, and the general welfare. Defs.' Mot. 26-27. As explained above, however, the Ordinance's text expressly contradicts that position. Defendants similarly fall short in their contention that the Ordinance's lack of a penalty provision removes it from *Clyde*'s scope. While the ordinance at issue in *Clyde* did include a penalty provision, that 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. Nor does Defendants' citation to *Ohio Association of Private Detective Agencies v. N. Olmsted*, 65 Ohio St.3d 242, 602 N.E.2d 1147 (1992), support their proposition that a police power ordinance must include a penalty provision. There, the Supreme Court considered an ordinance that required security officers, private policemen, and similar workers to register with the local police department before commencing employment. *Id.*

at 242. The court held that the ordinance constituted an exercise of police power because it imposed a licensing requirement, *id.* at 244, and nothing in the decision suggests that a *penalty* provision is a necessary component of a police power ordinance.

Furthermore, another Supreme Court of Ohio decision cited by both the *Clyde* court and Defendants' Motion demonstrates that a permissive ordinance can constitute an exercise of police power. *See Marich*, 116 Ohio St.3d 553, 2008-Ohio-92, 880 N.E.2d 906, at ¶¶ 14, 33-34 (municipal ordinance including provision allowing oversize vehicles to drive on certain roads without a permit constitutes an exercise of police power because "traffic ordinances in general arise from this power"). This makes sense; indeed, Defendants' asymmetrical conception of the police power would effectively gut the General Assembly's power to legislate state-level firearms restrictions by allowing municipalities to enact end-runs around those restrictions so long as they do not impose any penalties. That cannot be right. It is the Ordinance's area of regulation (firearms possession)—and not the presence or absence of a penalty provision—that determines its police power classification. *See Clyde* at ¶ 34; *compare Marich* at ¶ 14 ("It is now clear that the regulation of traffic is an exercise of police power that relates to public health and safety as well as the general welfare of the public.")

3. Ohio's Statutory Prohibition on Firearms in Buildings Containing Courtrooms is a General Law

The state statutes with which the Ordinance conflicts—R.C. 2923.123 and 2923.126—are unquestionably general statutes for purposes of the home-rule analysis. Pls.' Mot. 16-17. Defendants relegate their argument regarding the third factor of the home-rule analysis to a footnote in their brief. Defs.' Mot. 17, fn. 5. Defendants contend, essentially, that the Supreme Court of Ohio got it wrong when it held that R.C. 2923.126 is a general law. *See Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967 at ¶ 52. The statute at issue in *Clyde* (R.C. 2923.126) is one of the two statutes at issue in this case, and the Supreme Court's holding controls.

Defendants do not specifically address the other statute at issue, R.C. 2923.123, and thereby waive the argument that it is not a general law. In any event, the Supreme Court's reasoning in *Clyde* applies even more strongly to R.C. 2923.123. As Plaintiffs detail in their Motion for Summary Judgment, R.C. 2923.123 meets the four factors the Supreme Court has established for evaluating which statutes constitute general laws. *See* Pls.' Mot. 17; *see also* R.C. 2923.123(B) ("No person shall knowingly possess . . . a deadly weapon or dangerous ordnance in a . . . building or structure in which a courtroom is located."). R.C. 2923.123, like R.C. 2923.126, is a general law.

B. Plaintiffs Have Standing to Pursue Their Declaratory Judgment Claim, Which Also Succeeds on the Merits[11]

"[D]eclaratory relief is available to a plaintiff who can show that (1) a real controversy exists between the parties, (2) the controversy is justiciable, and (3) speedy relief is necessary to preserve the rights of the parties." *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 49. Defendants argue that Plaintiffs do not have a real, immediate, and justiciable controversy in this case. Defs.' Mot. 29-31. As Plaintiffs explained above, at 4-9, that is simply not true. A real, justiciable controversy exists between the parties, *see* Pls.' Mot. 19-20, and Plaintiffs' proof at summary judgment supports the factual allegations made in the Complaint, *see* Compl. ¶¶ 6, 51-59; Handley Dep. 69:9-24, 170:22-171:21; Handley Aff. ¶¶ 4-6, 8; Iannelli Dep. 54:6-9, 63:16-66:20; Iannelli Aff. ¶¶ 8-18. The Ordinance is currently in effect and is chilling the participation of both Mr. Iannelli and Ms. Handley at City Council meetings. For the same reasons, Defendants' further contention that Mr. Iannelli seeks an advisory opinion from this Court, *see* Defs.' Mot. 30, is simply not true. The testimony cited by Defendants on this point, Iannelli Dep. 51:20-52:23, is followed *immediately* by testimony regarding

[11] Defendants' arguments regarding the merits of Plaintiffs' declaratory judgment claim mirror their arguments regarding the merits of Plaintiffs' taxpayer claim. Defs.' Mot. 31. Plaintiffs likewise rely on the arguments above in support of the merits of declaratory judgment claim here.

Mr. Iannelli's specific concerns about guns in City Council meetings, which are at the core of his standing to seek declaratory relief. *See id.* at 52:24-54:9; *see also id.* at 63:16-66:20. Likewise, Defendants assert that Ms. Handley, when asked about her concerns with the Ordinance, did not discuss the Lebanon Municipal Court. Defs.' Mot. 30. Defendants do not explain how this undercuts her standing; the parties *agree* that guns are not permitted in the City Building when the Municipal Court is operating. The parties' disagreement concerns whether guns are permitted in the City Building at other times, and Ms. Handley's fears are understandably focused there.

Defendants also argue that this Court cannot resolve the controversy between the parties because the City Council could simply move its meetings to a building that does not contain a courtroom. Defs.' Mot. 30-31. It is this argument, not Plaintiffs', that depends on a hypothetical. During the approximately 18 months of this litigation, Defendants have not moved the location of City Council meetings. The facts remain the same. The Lebanon City Council meets in the courtroom, which is on the second floor of the Lebanon City Building, where guns are not allowed under state law. Defendants passed an Ordinance that purports to allow the carrying of handguns in the City Building during City Council meetings. Those are the facts of this case, and they present a live controversy. Moreover, even if Defendants were to move the location of the City Council meetings, it cannot be assumed that concealed carry would be permitted. Whether the City Council would be empowered to permit concealed carry in the new location would depend on the nature of that new location. For instance, if the City Council moved their meetings to a school or a house of worship, R.C. 2923.126 would continue to prevent concealed carry. *See* R.C. 2923.126(B)(2), (6). In other words, the City would remain bound by the laws of the State, as it is here.

CONCLUSION

For the foregoing reasons, Defendants have not met their burden of establishing that they are entitled to summary judgment as a matter of law. Plaintiffs respectfully request that the Court deny Defendants' Motion for Summary Judgment, and grant Plaintiffs' corresponding motion.

September 14, 2022

Respectfully submitted,

/s/Carolyn Shanahan

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that Plaintiffs' Memorandum Contra Defendants' Motion for Summary Judgment, along with the attached Affidavits of Brooke Handley and David Iannelli, has been served by electronic mail on the following counsel of record, this 14th day of September, 2022:

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