

**COURT OF COMMON PLEAS  
WARREN COUNTY, OHIO**

<b>CAROL DONOVAN, et al.</b>	:	<b>CASE NO. 21 CV 094117</b>
	:	
<b>Plaintiffs</b>	:	<b>JUDGE TIMOTHY N. TEPE</b>
	:	<b>MAGISTRATE MARKUS L. MOLL</b>
<b>v.</b>	:	
	:	<b>DEFENDANTS' REPLY BRIEF IN</b>
<b>CITY OF LEBANON, et al.</b>	:	<b>SUPPORT OF DEFENDANTS' MOTION</b>
	:	<b>FOR SUMMARY JUDGMENT</b>
<b>Defendants.</b>	:	
	:	<b>WITH SUPPLEMENTAL AFFIDAVIT</b>
	:	<b>OF SCOTT BRUNKA ATTACHED</b>

Now comes Defendants, by and through undersigned counsel, and submit the following Reply Brief in Support of their Motion for Summary Judgement.

**I. ARGUMENT**

**a. The Ordinance does not conflict with state law.**

The parties agree that whether the Ordinance conflicts with state law turns on what constitutes a “courtroom” for purposes of the state laws at issue. More specifically, the core question for this Court is whether the Multipurpose Room<sup>1</sup> in the City Building constitutes a “courtroom” at all times no matter how it is set up or being used. The clear intent of the legislature is that it constitutes a “courtroom” only when it has been transformed to its “Court-session-use” set-up and Court is in session.

Plaintiffs make only four arguments in support of their meritless claim that the Multipurpose Room always constitutes a “courtroom,” and that the Ordinance therefore conflicts with state law. Plaintiffs incorrectly allege: (1) based on the plain language of the state statutes at issue the Multipurpose Room always constitutes a “courtroom;” (2) under the cannon of

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given them in Defendants’ Motion for Summary Judgment and Defendants’ Memorandum in Opposition to Plaintiffs’ Motion for Summary Judgment.

“*noscitur a sociis*” the General Assembly intended for a multipurpose room sometimes used as a courtroom to always constitute a “courtroom;” (3) finding that the Multipurpose Room does not always constitute a “courtroom” would lead to “absurd results;” and (4) specific authority cited by Defendants is “inapposite.” Plaintiffs’ Memorandum Contra Defendants’ Motion for Summary Judgment (“Plaintiffs’ Response”), pp. 14-18; Plaintiffs’ Motion for Summary Judgment (“Plaintiffs Motion”), pp. 11-15. As explained below, all four arguments fail.

1. ***If the Court finds the state statutes at issue unambiguous, their plain language reveals the that the General Assembly intended that a multipurpose room – such as at issue here – does not always constitute a “courtroom.”***

The parties agree on the basic tenants of statutory construction. In construing a statute, the *primary goal "is to ascertain and give effect to the intent of the legislature* as expressed in the statute." *Stewart v. Vivian*, 2016-Ohio-2892, 64 N.E.3d 606, 2016 Ohio App. LEXIS 1753, ¶ 44 (12<sup>th</sup> Dist. 2016) quoting *Hudson v. Petrosurance, Inc.* (2010), 127 Ohio St.3d 54, 2010-Ohio-4505, 936 N.E.2d 481, ¶ 30 (emphasis added). "If the meaning of the statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary." *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.* (1996), 74 Ohio St.3d 543, 545, 1996- Ohio 291, 660 N.E.2d 463. When a statute is ambiguous, however, a court must interpret the statute to determine the General Assembly's intent. *Sherwin-Williams Co. v. Dayton Freight Lines, Inc.* (2006), 112 Ohio St. 3d 52, 54, 2006-Ohio-6498, 858 N.E.2d 324. "A statute is ambiguous when its language is subject to more than one reasonable interpretation." *Clark v. Scarpelli* (2001), 91 Ohio St.3d 271, 274, 2001 Ohio 39, 744 N.E.2d 719.

The only reasonable interpretation of the of the plain language of the statutes at issue is that a multipurpose room – such is at issue here – is not ***always*** a “courtroom” just because it is sometimes set up and used for sessions of Court. This is demonstrated in the plain language of

the statutes which distinguish between a “courthouse” and “another building or structure in which a courtroom is located.” R.C. 2923.123(B), R.C. 2923.126(B)(3) and (B)(7) (emphasis added). This distinction evidences the General Assembly’s intention that these terms have distinct meanings and addressing distinct situations.

Unlike the term “courtroom,” the term “courthouse” has been defined under Ohio law. “[A]s its name implies, a courthouse is to furnish the rooms and facilities essential for the proper and efficient performance of the functions of the court.” *Committee for Marion County Bar Ass’n v. County of Marion* (1954), 162 Ohio St. 345, 352, 123 N.E.2d 521. Accordingly, the main purpose of a courthouse is always dedicated to the functions of the Court.

As Plaintiffs acknowledge, the term “courtroom” has not been defined by statute or case law. Accordingly, it has not been defined as always being dedicated to the court. And such a definition would be nonsensical, because as demonstrated here, a room in which court is sometimes held is not always dedicated to court. Further, courtrooms are sometimes located in courthouses, in municipal or county buildings, or even in leased space in privately owned buildings, depending upon the local jurisdictions’ preference, budget, and other considerations.

The General Assembly’s inclusion of both “courthouse” *and* “another building or structure in which a courtroom is located” shows that it intended to build flexibility into the statute to accommodate the various ways local jurisdictions handle the location in which court is held. For example, when the Multipurpose Room has had “construction issues,” Court sessions have sometimes been held in the City Building’s large conference room or in another building. Judge Hubbell Depo., p. 57:20-24.<sup>2</sup> No doubt Plaintiffs would claim, and Defendants would

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<sup>2</sup> All depositions cited herein were filed with the Court on August 10, 2022, and all affidavits cited herein – except for the Supplemental Affidavit of Scott Brunka which is attached hereto – were attached to Defendants’ Motion.

agree, that at such times, the rooms in which Court was held constituted a “courtroom” and triggered the prohibition on concealed carry.

Clearly whether a room constitutes a “courtroom” was intended by the legislature to be based on a factual inquiry with a temporal component. Without such an inquiry, the room in another building where Court was held during construction would not have constituted a “courtroom,” and the prohibitions on carrying handguns into that room and building would not have been triggered. That absurd result could not have been intended by the General Assembly.

Likewise, under the plain language of the statutes, just because court is sometimes held in a certain room does not always make that room a “courtroom.” The Multipurpose Room in the City Building is a perfect example of that. It was specifically constructed to transform between “Court-session” and “non-Court-session” uses. For example, the Long Table along the front of the room was constructed to provide seating of equal height for each of the Lebanon City Council members during their meetings, and to include a hydraulic system to raise the center seat to create a Bench for Court.<sup>3</sup> Dunavent Aff., ¶¶ 11-14; Brunka Aff., ¶¶ 13-15; Judge Hubbell Depo., pp. 151:18 – 153:8, Exhibit 3.

Plaintiffs incorrectly claim that the construction of the Multipurpose Room to allow it to transform from a “non-Court-session” set up to a “Court-session” set-up is irrelevant to whether the room constitutes a “courtroom” at all times under Ohio law.<sup>4</sup> This transformation of the

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<sup>3</sup> Plaintiffs’ claim that the Bench is always elevated (Plaintiffs’ Response, p. 11) is contrary to the undisputed evidence in this matter. Plaintiffs rely only on Exhibit F to their Motion for this claim. That image of a City Council meeting, however, clearly shows that all seats along the Long Table and its surface are the same height. No Council members’ seat is elevated more than any other. Plaintiffs’ Motion, Exhibit F. Further, City Manager Scott Brunka who attends Council meetings, Judge Hubbell who sits at the Bench, and the Court’s Bailiff who engages the hydraulic system to elevate the Bench, all explain that the surface of and seats at the Long Table are the same height when Court is not in session. Dunavent Aff., ¶¶ 11-14; Brunka Aff., ¶¶ 13-14; Judge Hubbell Depo., pp. 151:18 – 153:8, Exhibit 3. Plaintiffs have provided no evidence to the contrary and none exists.

<sup>4</sup> Plaintiffs also incorrectly claim that the Multipurpose Room is used by the Court a majority of the time. Plaintiffs’ Response, p. 9. The undisputed evidence is that the Court generally uses it only three afternoons a week starting at 1pm. Judge Hubbell Depo., p. 60:2-12; Brunka Aff., ¶ 8. That does not constitute the majority of the time.

Multipurpose Room for Court use is in accordance with the Rules of Superintendence for the Courts of Ohio which require with respect to courtrooms an elevated Bench, a security search of those entering, and certain audio-visual equipment. Plaintiffs' Response, p. 7, citing Rules of Superintendence for the Courts of Ohio, Appendix C, Ohio Court Security Standards, Standard 5, and Appendix D, Court Facility Standards. When the Multipurpose Room is not transformed for Court-session use, it does not satisfy these Rules, and is not prepared to be used as a courtroom.

Further, the Multipurpose Room is not always referred to as the "courtroom" as Plaintiffs incorrectly claim. It is also referred to, for example, as City Council Chambers and is so designated on Council's page of the City's website. Supplemental Affidavit of Scott Bunka attached hereto as **Exhibit A**, ¶ 5. And, even Judge Hubbell considers it a "multipurpose room." Judge Hubbell Depo., 91:5-19.

The Judge's own testimony makes it clear that the Multipurpose Room is not always a courtroom. According to the Judge, when he has had the need to schedule a court session outside of the Court's regular session hours, he first checks to make sure there is nothing else scheduled in the Multipurpose Room because he doesn't want to infringe on the City's use of the room. Judge Hubbell Depo., pp. 44:23 – 45:16; 111:1-7.

Clearly the only reasonable interpretation of the statutes at issue is that a multipurpose room sometimes used as a courtroom does not always constitute a "courtroom" based on the particular facts of the situations. And, based on the facts in this matter, the Multipurpose Room does not constitute a "courtroom" when Court is not in session.

2. ***If the Court finds the statutes at issue ambiguous, the rules of statutory construction reveal the that the General Assembly intended that a multipurpose room – such as at issue here – does not always constitute a “courtroom.”***

Plaintiffs present a competing interpretation of the state statutes at issue – that a multipurpose room sometime used as a courtroom ***always*** constitutes a “courtroom” regardless of surrounding facts and circumstances. As explained above, this is not a reasonable interpretation. If the Court, however, determines it may be reasonable – which it is not – then the statutes are ambiguous, and the Court must “look beyond the statutory language and apply rules of statutory construction.” *Cincinnati Bell Tel. Co. v. J.K. Meurer Corp.*, 2022-Ohio-540, 185 N.E.3d 632, 2022 Ohio App. LEXIS 481, ¶ 18 (1st Dist. 2022) quoting *State v. Porterfield* (2005), 106 Ohio St.3d 5, 2005-Ohio-3095, 829 N.E.2d 690, ¶ 11; *Clark v. Scarpelli*, *supra* at 274.

Plaintiffs implicitly admit that the canon of “*noscitur a sociis*” is proper to apply in this matter if the statutes are ambiguous. Plaintiffs Response, p. 17. Plaintiffs, however, make the meritless argument that application of this cannon “would compel the conclusion” that the General Assembly intended for a multipurpose room sometimes used for court sessions to ***always*** constitute a “courtroom” regardless of the particular facts of the situation. *Id.*, pp. 17-18. Plaintiffs rely on two nonsensical arguments in making this argument, and it fails.

First, Plaintiffs argue that because a courthouse is always a “courthouse” and the terms “courthouse” and “courtroom” are close together in the statutes’ text, the General Assembly must have intended that a room sometimes used as a courtroom always constitutes a “courtroom.” *Id.* The fact that these words are close together in the text of the statutes at issue provides no basis for this conclusion. In fact, for the reasons explained in detail above, the General Assembly’s distinction between a “courthouse” and “another building or structure in which a courtroom is located” evidences the General Assembly’s intention that these terms have different meanings

and provide flexibility based on facts in determining whether a room that is sometimes used as a courtroom always constitutes a “courtroom.”

Second, Plaintiffs argue that because the General Assembly designated schools, school buildings, and school premises as *always* constituting a “school safety zone” for purpose of Ohio’s concealed carry and deadly weapon statutes, it follows that the General Assembly intended that a room sometimes used as a courtroom *always* constitutes a “courtroom” under those same statutes. *Id.*, p 18. The exact opposite is true. The General Assembly demonstrated that they know how to designate a “school safety zone” as *always* being such 24/7, 365 days a year, and they chose to do so. In stark contrast, the General Assembly chose not to designate a room that is sometimes used as a courtroom as always constituting a “courtroom” even though they clearly knew how to do so. Accordingly, they clearly did not intend to do so.

3. *Defining a room that is sometimes used as a courtroom as not always constituting a “courtroom” does not lead to absurd results.*

Plaintiffs incorrectly argue that interpreting the statutes at issue to allow for a factual and temporal inquiry regarding what constitutes a “courtroom,” would lead to absurd results. *Id.*, p. 15. Defendants addressed this baseless argument in their Memorandum in Opposition to Plaintiffs’ Motion for Summary Judgment (“Defendants’ Response”). Rather than repeating themselves, Defendants provide a short summary and refer the Court to pages 13 to 14 of their Response. See also, Defendants’ Response, pp. 7-9. Plaintiffs’ absurdity argument is a thinly veiled attempt at improperly introducing for the first time a void for vagueness claim against the Ordinance that was not included in their Complaint. *Id.* And even if it had been, it would be meritless. Further, it is Plaintiffs’ incorrect reading of the statutes that would lead to absurd results. It would be absurd if the Multipurpose Room constitutes a “courtroom” when it has been physically and functionally transformed for City Council Chamber use and is so being used.

**4. *Plaintiffs mischaracterize authority cited by Defendants’ as “inapposite.”***

Plaintiffs incorrectly argue that certain authority cited by Defendants is “inapposite” because it does not address the definition of a “courtroom.” Plaintiffs’ Response, pp. 15-17. The parties agree that the term “courtroom” has not been defined in Ohio law, so Plaintiffs’ attack that the authority does not offer such a definition is nonsensical and without merit. The authority was explicitly offered to demonstrate it is “consistent with” the “fact that the Multipurpose Room...constitutes a ‘courtroom’ only when Court is in session.” Defendants’ Motion for Summary Judgement (“Defendants’ Motion”), p. 21. Plaintiffs do not dispute this consistency, which is clearly explained in Defendants’ Motion (pp. 21-24) and Response (pp. 14-15).

***b. The Ordinance is a proper exercise of the City’s power of local self-government.***

Plaintiffs rely on *Ohioans for Concealed Carry, Inc. v. City of Clyde* (2008), 120 Ohio St. 3d 96, 896 N.E.2d 967, for their position that the Ordinance is an exercise of the City’s police power. Defendants have explained in detail in their Motion (pp. 24-28) and summarized in their Response (pp. 16-19), that the reasoning and authority upon which the court decided the Clyde ordinance is an exercise of police power do not apply Ordinance 2020-022. And, in fact, based on the court’s reasoning in *Clyde*, the Ordinance at issue here does not constitute an exercise of police power and is, in fact, a proper exercise of the City’s power of local self-government.<sup>5</sup>

***c. As a matter of law, Plaintiffs’ claim for declaratory judgment fails.***

Plaintiffs lack standing to bring their declaratory judgment action, and even if they had standing, it would fail on its merits. Plaintiffs dedicate over five pages of their Response and provide two affidavits in a failed attempt to show that Defendants misled the Court about Plaintiffs’ participation in City Council. Plaintiffs’ Response, pp. 4-9. Defendants did not. The undisputed

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<sup>5</sup> As explained in detail in footnote 5 of Defendants’ Motion, Plaintiffs Count One is also without merit and fails because the state statutes at issue do not constitute general laws.



facts are that Plaintiff Handley's attendance at Council meetings and work sessions increased in both 2020 and 2021 – after the Ordinance passed – eight times over what it had been the year before it passed. *Id.*, p. 2; Handley Depo., pp. 78:15-79:18. It is also undisputed that when specifically asked “why do you not go to city council meetings,” Plaintiff Iannelli gave several reasons, none of which are related to the Ordinance. Iannelli Depo., pp. 66:22-67:17. Neither Plaintiffs' Response, nor their affidavits, dispute these facts. They simply talk around them.<sup>6</sup>

Plaintiffs' claim that they are currently suffering injury from the Ordinance is not supported by the undisputed evidence, and they therefore lack standing to bring their declaratory judgment claim. *L.A. v. Lyons* (1983), 461 U.S. 95, 101-02, 1983 U.S. LEXIS 152 (Plaintiffs must show actual injury or immediate threat of actual injury. Abstract injury is not enough.). Even assuming *arguendo*, Plaintiffs are afraid of participating in Council meetings because of what could happen, such speculation of injury also does not confer standing. *Id.*, at 111. Further, what Plaintiffs really seek is an order disallowing concealed carry in City Council meetings, which would be contrary to undisputed law as there is no prohibition on concealed carry in such meetings. So, the alleged controversy cannot be resolved by this Court – as Council could merely change where it meets – and for this additional reason, Plaintiffs lack standing. *Wurdlow v. Turvy*, 2012-Ohio-4378, 977 N.E.2d 708, 2012 Ohio App. LEXIS 3843, ¶ 13 (10<sup>th</sup> Dist. 2012) (“[a] court may deny declaratory relief... if the declaratory judgment will not terminate the uncertainty or controversy.”)

As explained in detail above and in Defendants' Motion and Response, as a matter of law the Ordinance does not conflict with state law and is a valid exercise of the City's Home Rule authority. Accordingly, Plaintiffs' claim for declaratory judgment fails on the merits.

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<sup>6</sup> Plaintiffs also talk around the issue of shopping for Plaintiffs. The undisputed evidence shows that Mr. Duning and Everytown Law worked together to find Plaintiffs to file this lawsuit (Handley Depo., pp. 154:7-14, Exhibit Q) and that Everytown Law is funding this lawsuit for Plaintiffs (*Id.* p. 126:14-22; Iannelli Depo. pp. 77:2-10; 94:5-9).

## II. CONCLUSION

For the foregoing reasons, no genuine issue of material fact exists for trial, and Defendants are entitled to summary judgment as a matter of law on Plaintiffs' claims.

Respectfully Submitted,

/s/ Rebecca Simpson Heimlich

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*Attorneys for Defendants*

## CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was served this 28<sup>th</sup> day of September 2022, via email upon the following attorneys for Plaintiffs:

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/s/ Rebecca Simpson Heimlich

Rebecca Simpson Heimlich (0064004)

# **EXHIBIT A**

## **COURT OF COMMON PLEAS WARREN COUNTY, OHIO**

<b>CAROL DONOVAN, et al.</b>	:	<b>CASE NO. 21 CV 094117</b>
	:	
<b>Plaintiffs</b>	:	<b>JUDGE TIMOTHY N. TEPE</b>
	:	<b>MAGISTRATE MARKUS L. MOLL</b>
<b>v.</b>	:	
	:	
<b>CITY OF LEBANON, et al.</b>	:	
	:	<b>SUPPLEMENTAL AFFIDAVIT OF</b>
<b>Defendants.</b>	:	<b>SCOTT BRUNKA</b>

<b>STATE OF OHIO</b>	)
	) <b>SS:</b>
<b>COUNTY OF WARREN</b>	)

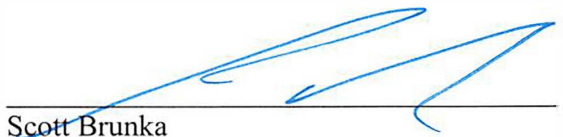
Now comes Scott Brunka, being first duly sworn and cautioned, and deposes and states as follows:

1. I have personal knowledge of the matters set forth herein and am competent to testify regarding the same.
2. I am employed by the City of Lebanon, Ohio as its City Manager, and I have held that position with the City for nearly five years. Prior to holding the position of City Manager, I was the City's Deputy City Manager for fifteen years.
3. The City Building located at 50 South Broadway, Lebanon, Ohio 45036 (the "City Building") houses many of the City's departments including Community Development and Planning, Administration (City Manager's Office), Service, Finance and Tax, Law, Building Maintenance, and Engineering.
4. On the second floor of the City Building is a large multipurpose room that is used for several purposes including Lebanon City Council meetings, Lebanon Board of Zoning Appeals meetings, Lebanon Planning Commission meetings, sessions of the Lebanon Municipal Court,

wellness seminars sponsored by the City for its employees and other employee meetings and celebrations (the “Multipurpose Room”).

5. The Multipurpose Room is referred to differently depending upon its use. For example, on the “City Council” page of the City of Lebanon’s website, the Multipurpose Room is designated as “Council Chambers.” That page of the City’s website can be found at this link [https://www.lebanonohio.gov/government/city\\_council/index.php](https://www.lebanonohio.gov/government/city_council/index.php), and a screenshot of it is attached hereto as **Exhibit 1**.
6. Each weekday, members of my staff lock the entrance doors to the City Building at 5pm. If Lebanon Municipal Court is still in session at 5pm, which is a rare occurrence, my staff will lock the entrance doors to the City Building when the Court session ends.
7. On evenings when there is a City Council meeting or work session, or another public meeting such as of the Lebanon Board of Zoning Appeals or Lebanon Planning Commission, I or a member of my staff will unlock the entrance doors to the City Building about an hour or half-hour before such meeting is to begin. For example, the City Building entrance doors will be unlocked between 6:00pm and 6:30pm for a 7:00pm City Council meeting.
8. When the public meeting concludes. I or my staff will again lock the entrance doors to the City Building.

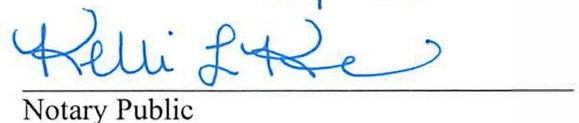
**FURTHER AFFIANT SAITH NAUGHT.**

  
\_\_\_\_\_  
Scott Brunka

Sworn to before me and subscribed in my presence this 26<sup>th</sup> of September, 2022.



KELLI L. KLINE  
Notary Public, State of Ohio  
My Commission Expires:  
August 17, 2025

  
\_\_\_\_\_  
Notary Public



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# City Council

Q Search...

About the City Council

Members

The Lebanon City Council consists of seven members who are directly elected by the citizens for staggered four-year terms.

Contact Members of City Council

Contact information for City Council Members is available on the [Contact City Council](#) page.

Council-Elected Officials

The mayor and vice mayor are elected by City Council from its members for a two-year term. They preside at City Council meetings. The council also appoints the City auditor / clerk of council and City attorney.

Responsibilities

The City Council establishes law and policy by passing ordinances and resolutions. The council also appoints the City manager, adopts the City budget, approves appropriations, contracts in the City's name, and levies taxes.

Meetings

Lebanon City Council meetings are open to the public in Council Chambers at 50 S Broadway:

7:00 pm

Regular meetings are scheduled on the second and fourth Tuesday of each month

Work session meetings are scheduled on the first Tuesday and third Monday of each month

To access agendas, minutes and video recordings of past City Council Meetings, [click here](#)

To access agendas, minutes and audio recordings of past City Council Work Sessions, [click here](#)

Meeting Broadcast

Regularly-scheduled council meetings are broadcast on Channel 6 on the Cincinnati Bell Cable TV system and streamed live on [YouTube](#). Previous City Council Meeting video recordings can be viewed [here](#).