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**

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

GRAY & DUNING
J. William Duning
130 East Mulberry
Lebanon, Ohio 45036
(513) 932-5532
duning@grayandduning.com

EVERYTOWN LAW
Len Kamdang*
Carolyn Shanahan*
Laura Keeley*
450 Lexington Avenue
P.O. Box 4184
New York, N.Y. 10017
(646) 324-8126
lkamdang@everytown.org
cshanahan@everytown.org
lkeeley@everytown.org

Andrew Nellis*
P.O. Box 14780
Washington, D.C. 20044
(202) 517-6621
anellis@everytown.org
**Admitted pro hac vice*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

ARGUMENT

Defendant City of Lebanon enacted Ordinance No. 2020-022 (the "Ordinance") in contravention of clear Ohio law. The plain and unambiguous text of R.C. 2923.123 and 2923.126(B)(3) prohibits the carrying and possession of deadly weapons, including firearms, and dangerous ordnances into "a courthouse or into another building or structure in which a courtroom is located." R.C. 2923.123(A); *see also* R.C. 2923.123(B) and 2923.126(B)(3).

In defending the Ordinance, Defendants continue to offer inapposite and irrelevant authority, including a backwards application of the noscitur a sociis principle, in support of an unreasonable reading of state law. They also confuse Plaintiffs' arguments regarding the absurdity and unworkability of their interpretation of state law with a vagueness challenge to the Ordinance that Plaintiffs do not raise. In short, Defendants attempt to displace the straightforward rule set by state law in favor of a confusing and unworkable rule that departs from the statutory text. Finally, they recycle their unwarranted and baseless attacks on Plaintiffs and Plaintiffs' counsel.

Plaintiffs have rebutted Defendants' arguments in their memoranda in support of their Motion for Summary Judgment and in opposition to Defendants' corresponding motion. *See* Pls.' Mot. for Summary Judgment ("Pls.' Mot.) 9-20; Pls.' Opp. to Defs.' Mot. for Summary Judgment ("Pls.' Opp.") 12-23. In an effort to minimize duplicative briefing, Plaintiffs will highlight here just a few select points in response to Defendants' opposition to their Motion for Summary Judgment.

A. Plaintiffs Do Not Seek Relief on Vagueness Grounds

Defendants incorrectly claim, with no support, that Plaintiffs seek relief on an unpled void-for-vagueness claim: "Plaintiffs' main argument really boils down to a claim that the Ordinance is impermissibly void for vagueness." Defs.' Opp. to Pls.' Mot. for Summary Judgment ("Defs.' Opp.") 8; *see also id.* 2, 9.

Throughout this litigation, Plaintiffs have clearly and consistently articulated their grounds for relief on the merits of their taxpayer and declaratory judgment claims: Lebanon exceeded its home-rule authority in passing the Ordinance because the Ordinance is an exercise of police power that *conflicts with state law*. Compl.¶¶ 8-9, 18-39, 67-71, 77-80; Pls.' Opp. to Defs.' Mot. to Dismiss 1, 8-17, 20; Pls.' Mot. 1-4, 9-18; Pls.' Opp. 1, 12-22.[1] That is, Plaintiffs seek an injunction and declaration against the Ordinance because it directly contravenes R.C. 2923.123 and 2923.126(B)(3), *not* because it is vague. In fact, the word "vague" does not appear anywhere in Plaintiffs' Complaint or in their briefing before the Court.

To be sure, Plaintiffs have raised the Ordinance's lack of clarity, but they have done so in relation to their pled claims. First, in establishing their undisputed standing to assert their taxpayer claim pursuant to R.C. 733.59, Plaintiffs have explained that they seek to vindicate the public's interest in clear, uniform, and administrable rules regarding where qualified individuals may carry concealed handguns. *See* Pls.' Mot. 19. Second, in rebutting Defendants' strained reading of R.C. 2923.123 and 2923.126(B)(3), Plaintiffs have demonstrated that Defendants' interpretation of state law would open the door to unworkable rules. Pls.' Mot. 13-15. Plaintiffs highlighted the Ordinance as an example of just such an unworkable rule. *Id.*

Notably, Defendants do not meaningfully dispute that the Ordinance is in fact unclear on its face. The Ordinance purports to permit the carrying of concealed handguns in the City Building "except during the operation of any function of the Lebanon Municipal Court." Pls.' Ex. A (adopting

[1] Defendants also miss the mark in asserting that "Plaintiffs claim" that this case turns on "when functions of the Court occur and court personnel are present." Defs.' Opp. 2. Plaintiffs' position is the exact inverse—as Plaintiffs have consistently and clearly stated, Ohio law prohibits the possession of firearms in the City Building *at all times*, irrespective of whether the Municipal Court is operating. *See, e.g.*, Pls.' Mot. 11; Pls.' Opp. 12.

Lebanon Code of Codified Ordinances 508.13).[2] The Ordinance does not define what constitutes a "function" of the Municipal Court. At the time he drafted the Ordinance and presented it to the City Council, Lebanon City Attorney (and Defendant here) Mark Yurick explained that he did not think that the City Council could permit possession of firearms in the City Building when Municipal Court personnel are on duty. Pls.' Mot. 7; *see* Yurick Dep. 47:1-3, 89:16-20, 91:6-9; Pls.' Ex. I at 56:3-59:11; *see also* Pls.' Ex. J (email from Mr. Yurick stating: "I don't think that Lebanon's City Council may allow weapons in the building when court is in session or when court personnel (clerks, probation officers, etc.) are present and on duty."). Likewise, Lebanon City Manager Scott Brunka's understanding of the Ordinance is that it does not permit concealed carry in the City Building when Municipal Court staff are present. Pls.' Mot. 7; Brunka Dep. 68:23-69:13. But this raises more questions. If Judge Hubbell works in his City Building chambers while City Council meetings occur in the courtroom—as he has in fact done—does the Ordinance permit concealed carry? *See* Pls.' Mot. 2, 5, 13-15; Hubbell Dep. 150:18-21. If the hours during which Municipal Court personnel work in the City Building vary day-to-day, including on the weekend—as, in fact, they do (Pls.' Mot. 4-5)—how can a member of the public know whether the court is "functioning" for purposes of the Ordinance? Pls.' Mot. 14-15. Defendants sidestep these questions and have not clearly explained exactly what constitutes "the operation of any function of the Lebanon Municipal Court" for purposes of the Ordinance. *See, e.g.*, Defs.' Mot. 11 (stating, in a circular manner, that "[t]he Ordinance allows the carrying of a concealed handgun into the City Building at times defined in the Ordinance.").

The reality is that the Ordinance provides no clear instructions to members of the public. Pls.' Mot. 14. Even Judge Martin E. Hubbell, the presiding judge of the Municipal Court, acknowledged

[2] Plaintiffs' Exhibit A is attached to the Attorney Affidavit of Laura Keeley submitted in support of Plaintiffs' Motion for Summary Judgment.

uncertainty about the meaning of the term "function" for purposes of the Ordinance. Pls.' Mot. 14; Hubbell Dep. 134:1-19. Plaintiffs emphasize the Ordinance's lack of clarity, not to challenge it on vagueness grounds, but to illustrate the type of confusing rules that Defendants' muddied reading of state law would allow. That is, the Ordinance's fuzzy and ill-defined language underscores the wisdom of the General Assembly's choice to draw a bright line rule and to *not* temporally limit the state law prohibition on carrying and possessing firearms in buildings containing courtrooms.

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

The merits of Plaintiffs' two claims turn on the same issues. As detailed in Plaintiffs' memoranda in support of their Motion for Summary Judgment and in opposition to Defendants' corresponding motion, the Ordinance impermissibly exceeds Lebanon's constitutional home-rule authority. Pls.' Mot. 10-18; Pls.' Opp. 13-22. In their opposition, Defendants primarily contend that the Ordinance is a valid exercise of Lebanon's home-rule authority because (1) R.C. 2923.123 and 2923.126(B)(3) only prohibit firearms in the Lebanon City Building when the Municipal Court is in session and (2) the Ordinance is an exercise of local self-government, and not Lebanon's police power. Defs.' Opp. 9-19. Defendants offered the same arguments in their Motion for Summary Judgment (Defs.' Mot. 17-28), and Plaintiffs have already detailed the numerous defects in both arguments. Pls.' Opp. 13-21.[3] Plaintiffs here emphasize a few points in reply to Defendants' flawed arguments.

First, Defendants have not disputed the absurd consequence of their proffered reading of state law; namely, if R.C. 2923.123 prohibits the possession of firearms in the Lebanon City Building *only* when the Municipal Court is in session (Defs.' Opp. 13-16), then it by necessity also prohibits the

[3] Defendants also contend, in passing, that the Ordinance does not exceed Lebanon's home-rule authority because the Ohio statutes at issue are not general laws. Defs.' Mot. 17 n.5; Defs.' Opp. 19 n.7. The Supreme Court of Ohio's decision in *Ohioans for Concealed Carry v. City of Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, controls here, and Defendant's argument is without merit. Pls.' Opp. 21-22; *see also* Pls.' Mot. 16-17.

possession of bombs, grenades, and other deadly weapons in the City Building *only* when the Municipal Court is in session. Pls.' Mot. 13.[4] Put another way, Defendants' reading of R.C. 2923.123 only works if one accepts that the General Assembly intended to criminalize the possession of a bomb in the City Building during formal Municipal Court sessions but not during other periods when Municipal Court personnel, including the judge, work in the building. That simply does not make sense. Even if the plain language of state law was not clear (and it is), courts abide by the principle that "'statutes will be construed to avoid unreasonable or absurd consequences.'" *State v. White*, 142 Ohio St.3d 277, 2015-Ohio-492, 29 N.E.3d 939, ¶ 29, quoting *State v. Wells*, 91 Ohio St.3d 32, 34, 740 N.E.2d 1097 (2001); *see also* R.C. 1.49(E). The statutory provisions at issue prohibit and criminalize the possession of deadly weapons, including firearms, and dangerous ordnances in the Lebanon City Building without any temporal limitation.

Second, Defendants continue to argue that the Lebanon Municipal Courtroom is not a "courtroom" outside Municipal Court sessions because the City alters its courtroom such that it no longer complies with the Supreme Court of Ohio's Rules for the Superintendence for the Courts. Defs.' Opp. 7, 13-14. In other words, in order to establish the meaning of *state law*, Lebanon points to *its own* decision to alter its courtroom. This is nonsensical. As Plaintiffs stated in their opposition to Defendants' Motion for Summary Judgment, whether the City of Lebanon chooses to use different audiovisual equipment, turn off its security machine, or adjust the height of the courtroom bench

[4] As discussed in Plaintiffs' Motion for Summary Judgment and above at 3, Mr. Yurick, who drafted the Ordinance, cautioned that Ohio law appears to preclude the City Council from permitting the possession of firearms in the City Building during any periods where Municipal Court personnel are on duty in the building. *See* Pls.' Mot. 2, 7. In their opposition brief, Defendants attempt to distance themselves from this position, and assert that state law only prohibits firearms in the City Building when the Municipal Court is in session. Defs.' Opp. 13-16 & n.5. Either interpretation is contrary to the plain text of the law and suffers from the same defects outlined by Plaintiffs in their summary judgment briefing.

outside formal courts sessions has absolutely no bearing on the meaning of the word "courtroom" in R.C. 2923.123 and 2923.126. Pls.' Opp. 10-11. Moreover, Defendants' argument on this point assumes, without establishing, both the meaning of the Rules of Superintendence and Lebanon's compliance with those rules; but neither issue is before this Court or developed in the record. And the Rules themselves suggest that that they are not to be used in deciding questions of statutory interpretation. Rule 2 defines several terms—including "court" but not "courtroom," which is not defined in the rules—and states in corresponding Commentary: "Because the Rules of Superintendence relate primarily to the internal operation of Ohio courts, these definitions are not intended to apply to questions of statutory interpretation." Sup. R. 2, cmt. (Jul. 1, 1997). In short, Lebanon's adjustments to the Municipal Courtroom outside formal court sessions—which may or may not comply with the Rules for Superintendence for the Courts—do not change, or otherwise shed additional light on, the plain meaning of state law.

Finally, Plaintiffs briefly address Defendants' invocation of the noscitur a sociis canon (Defs.' Opp. 11-13), which Plaintiffs also address in their opposition to Defendants' Motion for Summary Judgment. Pls.' Opp. 17-18. Where a statute is "clear and unambiguous," courts apply it as written and assign undefined words their "common, ordinary, and accepted meaning." *Donaker v. Parcels of Land*, 140 Ohio St.3d 346, 2014-Ohio-3656, ¶ 12; *see also* R.C. 1.42 ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage."). Where courts require a further aid, "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." *Inland Prods., Inc. v. Columbus*, 193 Ohio App.3d 740, 2011-Ohio-2046, 954 N.E.2d 14, ¶ 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.)). But "like any rule of construction," noscitur a sociis "does not apply absent ambiguity, or to

thwart legislative intent, or to make general words meaningless." 2A Sutherland Statutory Construction § 47:16 (7th ed.). Here, where R.C. 2923.123 and 2923.126(B)(3) are clear and unambiguous, the Court need not reach the noscitur a sociis principle. Even if it did, however, it would support Plaintiffs' position; indeed, Defendants' application of the principle is entirely backwards. Defendants point to the prohibition on carrying firearms in school safety zones (R.C. 2923.126(B)(2))—which is not limited in time—and insist that the Court should interpret the word "courtroom" in a different manner—*i.e.,* as temporally limited. But the noscitur a sociis principle dictates that "'the coupling of words denotes an intention that they should be understood in the *same general sense.*'" *Inland Prods.* at ¶ 25, quoting *Wilson*, 70 Ohio St.3d at 453 (Emphasis added). Furthermore, the word "courtroom" in R.C. 2923.123(A), (B) and 2923.126(B)(3) 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. Thus, it follows that the meaning of the phrase "building or structure in which a courtroom is located" is likewise static and not time-dependent.

C. Plaintiffs Have Standing to Seek Declaratory Judgment

Defendants challenge Plaintiffs' standing only with regard to their declaratory judgment claim. Defs.' Opp. 19-20. Their arguments on this point mirror those they offered in their own Motion for Summary Judgment. Defs.' Mot. 7-9, 28-31. Plaintiffs rebutted these arguments and demonstrated their declaratory judgment standing in their prior briefing. Pls. Mot. 8, 19-20; Pls.' Opp. 4-9, 22-23.

D. Plaintiffs Are Not Trying to "Impose" an "Anti-Gun Political Agenda"

As in their opening brief in support of their Motion for Summary Judgment, Defendants assert here that Plaintiffs and Everytown Law are trying to impose an "anti-gun political agenda" that is "not

only contrary to law, but is also out of line with recent action by Ohio's elected policy makers and a recent United States Supreme Court decision, both of which strengthened Second Amendment rights." Defs.' Opp 4-5 & n.2 These contentions, which Plaintiffs addressed more fully in their opposition to Defendants' motion, are both wrong and irrelevant, for several reasons. *See* Pls.' Opp. 2-4 & n.9.

First, this case arose out of local opposition to the Ordinance (Pls.' Opp. 2-3). The Ordinance adversely impacts Plaintiffs, whose full participation in City Council meetings is chilled by the potential presence of firearms. Pls.' Opp. 4-9, 22-23.

Second, Plaintiffs are not attempting to impose an "anti-gun agenda," or even challenge Ohio's concealed carry regime. Their claims, which are narrow in scope, seek *enforcement* of Ohio law, which clearly prohibits the possession of firearms in the Lebanon City Building. *See* Pls.' Opp. 11-12. Moreover, their personal political beliefs are irrelevant to the merits of their claims. *Id.*

Third, Everytown Law is not an "anti-gun organization." In fact, the broader Everytown organization, of which Everytown Law is a part, advocates for responsible gun ownership alongside other gun safety policies. Pls.' Opp. 3 n.2; *see also Responsible Gun Ownership*, https://www.everytown.org/issues/responsible-gun-ownership/.

Fourth, Plaintiffs' claims are not "out of line" with the recent U.S. Supreme Court decision cited by Defendants. On the contrary, and as noted by Plaintiffs in their opening brief in support of their motion, the U.S. Supreme Court recently reaffirmed, as "settled" law, that prohibitions on the carrying of firearms in courthouses and government buildings are "consistent with the Second Amendment." *New York State Rifle & Pistol Assn. v. Bruen*, __ U.S. __, 142 S.Ct. 2111, 2133, 213 L.Ed.2d 387 (2022); *see also* Pls.' Mot. 3 n.4; Pls.' Opp. 13 n.9. Defendants simply ignore this statement by the six-Justice *Bruen* majority. Similarly, Plaintiffs' claims are not "out of line" with recent action by the Ohio General Assembly. The legislature has not made any change to the applicable state law

prohibition on possessing deadly weapons, including firearms, in buildings containing courtrooms. *See* R.C. 2923.123 and 2923.126(B)(3). Earlier this year, the General Assembly repealed the requirement that those wishing to carry a concealed handgun obtain a permit. *See* R.C. 2923.111(B); Pls.' Mot. 3 n.5. That amendment had no effect on the prohibition at issue here. Pls.' Mot. 3 n.5.

CONCLUSION

For the foregoing reasons, along with those stated in Plaintiffs' memoranda in support of their Motion for Summary Judgment and in opposition to Defendants' Motion for Summary Judgment, Plaintiffs respectfully request that the Court grant summary judgment to Plaintiffs.

September 28, 2022

Respectfully submitted,

/s/ Carolyn Shanahan

GRAY & DUNING
J. William Duning (0001700)
130 East Mulberry
Lebanon, Ohio 45036
(513) 932-5532
duning@grayandduning.com

EVERYTOWN LAW
By: Carolyn Shanahan (PHV Reg. No. 22588-2022)

Len Kamdang* (PHV Reg. No. 21848-2022)
Laura Keeley* (PHV Reg. No. 25973-2022)
450 Lexington Avenue
P.O. Box 4184
New York, New York 10017
(646) 324-8126
lkamdang@everytown.org
cshanahan@everytown.org
lkeeley@everytown.org

Andrew Nellis* (PHV Reg. No. 25048-2022)
P.O. Box 14780
Washington, D.C. 20044
(202) 517-6621
anellis@everytown.org
**Admitted pro hac vice*
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Reply Memorandum in Support of Plaintiffs' Motion for Summary Judgment has been served by electronic mail on the following counsel of record, this 28th day of September, 2022:

Christopher P. Finney, Esq.
Rebecca Simpson Heimlich, Esq.
Finney Law Firm LLC
4270 Ivy Point Blvd., Suite 225
Cincinnati, Ohio 45245
chris@finneylawfirm.com
rsh@finneylawfirm.com

Curt C. Hartman, Esq.
The Law Firm of Curt C. Hartman
7394 Ridgepoint Drive, Suite 8
Cincinnati, OH 45230
hartmanlawfirm@fuse.net

Attorneys for Defendants

/s/ Carolyn Shanahan

Carolyn Shanahan (PHV Reg. No. 22588-2022)