

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

CAROL DONOVAN, et al.	:	CASE NO. 21 CV 094117
	:	
Plaintiffs	:	JUDGE TIMOTHY N. TEPE
	:	MAGISTRATE MARKUS L. MOLL
v.	:	
	:	DEFENDANTS' SUPPLEMENTAL
CITY OF LEBANON, et al.	:	BRIEF AS REQUESTED BY THE
	:	COURT
Defendants.	:	
	:	With Affidavit of Mark Yurick attached
	:	

Now come Defendants, by and through undersigned counsel, and submit the following Supplemental Brief in Support of their Motion for Summary Judgement in accordance with the Court's December 7, 2022 Order requesting the parties to brief the following issue:

- (1) What effect, if any, does the fact that the City of Lebanon represents to the public that the Lebanon Municipal Court is located at 50 South Broadway Lebanon, Ohio 45036 and the hours of operation are Monday-Friday 8:00 a.m. to 4:00 p.m.

(This representation is referenced herein as the "Operation Information.")

The Operation Information has no effect on the clear legal conclusion that City of Lebanon Ordinance 2020-022 (the "Ordinance") does not conflict with state law and is a valid exercise of the City's home rule authority. It has been undisputed throughout this litigation that when the Lebanon Municipal Court holds sessions, it generally does so at 50 South Broadway, Lebanon, Ohio 45036 (the "City Building") and that the operations of the Court - including the Clerk of Court's office and the probation department – are also located in the City Building, as is indicated in the Operation Information. It is also undisputed that the Ordinance prohibits concealed carry in the City Building "during the operation of any function of the Lebanon Municipal Court." Ordinance 2020-22 attached as Exhibit 1 to Plaintiffs' Complaint, p. 2. The Clerk of Court's office

and the probation department, which are operations of the Lebanon Municipal Court, are open daily – as the Operation Information indicates – between the hours of 8am and 4pm. Deposition of Judge Martin Hubbell, 92:2-3; Affidavit of Scott Brunka attached as Exhibit 1 to Defendants’ Motion for Summary Judgement (“Brunka Aff.”), ¶ 18, Exhibit A. Therefore, concealed carry is prohibited by the Ordinance during those hours. That is an undisputed fact, and Defendants have never argued otherwise.

As explained in detail in Defendants’ briefs and oral argument on the parties’ cross motions for summary judgment, the Multipurpose Room in the City Building constitutes a “courtroom” for purposes of the state statutes at issue only when Court is in session. So, the City of Lebanon could have allowed concealed carry in the City Building at any time that Court was not in session, because at such time no “courtroom” exists in the City Building. The City chose, however, not to allow concealed carry at all times it could have in the City Building. Instead, the City prohibited concealed carry in the City Building “during the operation of any function of the Lebanon Municipal Court.” Accordingly, the Ordinance prohibits concealed carry in the City Building when Court is in session – as it legally must – as well as when any other operation such as the clerk’s office and/or probation department are operating. The fact that the ordinance prohibits concealed carry at additional times – when any court function is operating – when it could have allowed it does not make the ordinance conflict with state law. Or said another way, the fact that the City of Lebanon did not allow concealed carry at all times that it legally could have does not make the Ordinance conflict with state law.¹ Further, based on the language of the Ordinance,

¹ Pursuant to Ohio Revised Code § 2923.126(B)(7) a municipality such as the City of Lebanon can choose to pass legislation allowing concealed carry in a municipal building. Nothing in that statute requires that a city must do so, or that if it does, it must allow such concealed carry at all times.

concealed carry is never allowed in the City Building at any time that a “courtroom” exists in that building, so there can be no conflict with state law.

Plaintiffs may argue that the Operation Information, which is provided on the Lebanon Municipal Court’s website², impacts either the definition of a “courtroom” under state law or whether there is a conflict between the Ordinance and state law. Such an argument would be nonsensical. The information on the City’s website and the Court’s website can be changed at any time without any action of Lebanon City Council being required to do so. Affidavit of Mark Yurick attached hereto as **Exhibit A** (“Yurick Aff.”), ¶ 7. The Court is in session when it is in session, the operations of the Court occur when they occur, and the Multipurpose Room is set up as a “courtroom” only when Court is in session. These are established facts in evidence in this matter. What the City may portray or announce to the public at any given time does not change those facts. It would be nonsensical for a legal determination in this case to turn on information on a website – or otherwise announced by the City – that could be changed at any time without a legislative act of City Council.

As the parties and the Court are well aware, at its core this case is about Plaintiffs’ desire to prohibit concealed carry in meetings of the Lebanon City Council. It is undisputed, however, that there is no prohibition under Ohio law on concealed carry in city council meetings if a city council votes to allow it, as the City of Lebanon has done.³ Plaintiffs’ sole basis for claiming that concealed carry is prohibited in Lebanon City Council meetings is that the City Council Chambers

² A screenshot of this website was provided by Defendants as Exhibit A to the Affidavit of Scott Brunka, which Affidavit is attached as Exhibit 1 to Defendants’ Motion for Summary Judgment; See also, Affidavit of Mark Yurick attached hereto as **Exhibit A**, ¶ 6.

³ As Plaintiffs admitted in their Response to Defendants’ Motion to Dismiss, “Licensees may carry a concealed handgun ‘anywhere in this state,’ subject to certain enumerated exceptions. R.C. § 2923.126(A).” Plaintiffs’ Response, p. 2. Plaintiffs do not claim – nor could they – that city council meetings or business are included in any of those “certain enumerated exceptions.”

allegedly constitute a “courtroom.” As explained in detail in Defendants’ briefs and their oral argument, as a matter of law no “courtroom” exists in the City Building when Court is not in session and the Multipurpose Room has been physically and functionally transformed for its myriad of non-courtroom uses. For example, it would be absurd for the Multipurpose Room to constitute a “courtroom” when it has been physically and functionally transformed for City Council Chamber use and is so being used. At such time, it is a City Council Chambers and deciding otherwise would impede upon the rights of Ohio citizens who have every right to carry a concealed handgun into City Council Chambers if City Council chooses – as it has here – to allow them to do so.

II. CONCLUSION

For the foregoing reasons, and those detailed in Defendants’ briefs and oral argument on the parties’ cross motions for summary judgement, 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

Christopher P. Finney (0038998)

Rebecca Simpson Heimlich (0064004)

Finney Law Firm LLC

4270 Ivy Point Blvd., Suite 225

Cincinnati, OH 45245

(513) 943-665

chris@finneylawfirm.com

rsh@finneylawfirm.com

Curt C. Hartman (0064242)

The Law Firm of Curt C. Hartman

7394 Ridgepoint Drive, Suite 8

Cincinnati, OH 45230

(513) 379-2923

hartmanlawfirm@fuse.net

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was served this 9th day of January 2023, via email upon the following attorneys for Plaintiffs:

J. William Duning
Gray & Duning
130 East Mulberry
Lebanon, Ohio 45036
duning@grayandduning.com

Andrew Nellis
P.O. Box 14780
Washington, D.C. 20044
anellis@everytown.org

Len Kamdang
Carolyn Shanahan
Everytown Law
450 Lexington Avenue, P.O. Box 4184
New York, New York 10017
lkamdang@everytown.org
cshanahan@everytown.org

/s/ Rebecca Simpson Heimlich
Rebecca Simpson Heimlich (0064004)

EXHIBIT A

COURT OF COMMON PLEAS WARREN COUNTY, OHIO


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	:	MAGISTRATE MARKUS L. MOLL
v.	:	
	:	
CITY OF LEBANON, et al.	:	
	:	AFFIDAVIT OF MARK YURICK
Defendants.	:	
	:	
	:	
STATE OF OHIO)	
) SS:	
COUNTY OF WARREN)	

Now comes Mark Yurick, 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 Attorney. I have held the position of Lebanon City Attorney for over 23 years. From about 2000 until 2007, I was so employed by the City. From 2007 until 2016, I held the position as outside counsel. And from 2016 to present, I have held the position of City Attorney as an employee of the City of Lebanon.
3. In my official capacity as City Attorney, I am a Defendant in this matter.
4. My duties and responsibilities as the City Attorney for the City of Lebanon are outlined primarily in our City Charter, and also in our Codified Ordinances as well as some state law that is not inconsistent with the City's Charter or Ordinances.


5. As a general matter I'm responsible for representing the City in legal matters and for giving advice to our City Council, as well as the administrative departments, including the City Manager, the City Auditor, and other department heads. I also supervise the Assistant City Prosecutor who represents the City in criminal matters in Municipal Court.
6. The City of Lebanon has a website that is located at <https://www.lebanonohio.gov/>. The City's website links to the City of Lebanon Municipal Court's webpage located at <http://court.lebanonohio.gov/>, a screenshot of which was previously provided to the Court by Defendants in this matter as Exhibit A to the Affidavit of Scott Brunka, which Affidavit is attached as Exhibit 1 to Defendants' Motion for Summary Judgment.
7. The information on the City of Lebanon's website and the Lebanon Municipal Court's website can be changed at any time without any action of Lebanon City Council being required. Further, any signage regarding handguns on or in the City Building, which is located at 50 South Broadway Lebanon, Ohio 45036, can also be changed at any time without any action of the Lebanon City Council being required. Such website information and signage – or other similar portrayal of information by the City – does not constitute an Ordinance or other legislative act by the City.

FURTHER AFFIANT SAITH NAUGHT.



Mark Yurick

Sworn to before me and subscribed in my presence this 6th day of January, 2023.



Notary Public

[SEAL]



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