

**IN THE COURT OF COMMON PLEAS  
STATE OF OHIO, COUNTY OF WARREN  
GENERAL DIVISION**

<b>CAROL DONOVAN, et al.,</b>	:	<b>CASE NO. 21-CV-094117</b>
	:	
<b>Plaintiffs,</b>	:	<b>JUDGE TIMOTHY N. TEPE</b>
	:	
<b>v.</b>	:	
<b>CITY OF LEBANON, et al.,</b>	:	<b><u>DECISION GRANTING</u></b>
	:	<b><u>DEFENDANT’S</u></b>
<b>Defendants.</b>	:	<b><u>MOTION FOR SUMMARY</u></b>
	:	<b><u>JUDGMENT AND DENYING</u></b>
	:	<b><u>PLAINTIFF’S MOTION FOR</u></b>
	:	<b><u>SUMMARY JUDGMENT</u></b>

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Pending before the Court is Defendants’, City of Lebanon (“Lebanon”) and Mark Yurick (“Mr. Yurick”)(collectively referred to as “Defendants”) motion for summary judgment, which was filed on September 28, 2022. Further pending before the Court is Plaintiffs’, Carol Donovan, David Inannelli, and Brooke Handley (“Plaintiffs”) motion for summary judgment, which was filed on September 14, 2022. It is important to note that while the case is captioned in Carol Donovan’s name, she is no longer a party as she has moved out of the City of Lebanon. (See Notice of Voluntary Dismissal of Plaintiff Carol Donovan). For the following reasons, Defendant’s motion for summary judgment is granted and Plaintiffs’ motion for summary judgment is denied.

**Factual and Procedural Background**

This case arises from a tax-payer lawsuit pertaining to the enactment of Ordinance No. 2020-0222. More specifically, the City of Lebanon enacted Ordinance No. 2020-0222

(“Ordinance”) in March of 2020, which authorized individuals with state-issued concealed carry license to carry handguns within the Lebanon City Building during City Council meetings, as well as other specified periods. This Ordinance directly prohibits the carrying of firearms during the operation of “any function of the Lebanon Municipal Court”.

Pursuant to the Ordinance, individuals are authorized to carry concealed weapons in the City Building located at 50 South Broadway, Lebanon, Ohio 45036 during times when the Lebanon Municipal Court is not in operation. The Ordinance states in pertinent part:

“Section 1. That Section 508.13 of the Lebanon Code of Codified ordinances, attached hereto as Exhibit A and incorporated herein as if fully set forth, permitting licensed individuals to carry concealed weapons in the City Building located at 50 South Broadway, Lebanon, Ohio 45036, during times when Lebanon, Ohio Municipal Court is not in operation is hereby adopted pursuant to Section 3.02 of the Charter of the City of Lebanon, Ohio and section 2923.126(B)(7) of the Ohio Revised Code.”

Further the Ordinance states:

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

The Plaintiffs who brought this action are David Iannelli, and Brooke Handley, who are both residents of Lebanon, Ohio. It should be noted Carol Donovan was a named Plaintiff, however, she has since moved out of the city. Therefore, she did not have standing to pursue this claim as this is a putative taxpayer lawsuit. Carol Donovan was voluntarily dismissed as a plaintiff on August 25, 2022.

As articulated in Plaintiffs’ Complaint, after the enactment of Ordinance No. 2020-0222, the Plaintiffs sent a letter to Defendant, Mr. Yurick, who is the Law Director for the City of Lebanon, and requested that the City Attorney’s office seek an injunction “requiring the city to comply with Ohio law and return to its prohibition on the possession of firearms within the City

Building.” Comp. at 61. On March 2, 2021, the City of Lebanon responded by letter and stated that it declined to seek injunctive relief.

### **Standard of Review**

Summary judgment is a procedural device used to terminate litigation when there are no issues in a case requiring a formal trial. *HSBC Bank USA v. Faulkner*, 2018-Ohio-3221, ¶ 11 (12th Dist.). Pursuant to Civ.R. 56, a trial court may grant summary judgment only when (1) there is no genuine issue of any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) the evidence submitted can only lead reasonable minds to a conclusion that is adverse to the nonmoving party. *Id.*, citing *BAC Home Loans Servicing, L.P. v. Kolenich*, 194 Ohio App.3d 777, 2011-Ohio-3345, ¶ 17 (12th Dist.). The party moving for summary judgment bears the initial burden of demonstrating that no genuine issue of material fact exists. *Id.* at ¶ 12. The party requesting summary judgment bears the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Drescher v. Burt*, 75 Ohio St.2d 280, 293 (1996).

Once this burden is met, the nonmoving party must then present evidence to show that there is some issue of material fact yet remaining for the trial court to resolve. *Id.* at ¶ 13; citing *Smedley v. Discount Drug Mart, Inc.*, 190 Ohio App.3d 684, 2010-Ohio-5665, ¶ 11 (12th Dist.). In determining whether a genuine issue of material fact exists, the evidence must be construed in the nonmoving party's favor. *Id.*

### **Analysis**

#### **Count One – Injunctive Relief**

While Defendant does not specifically raise the issue of standing in its motion, as it pertains to Count One, the arguments of appropriateness of Plaintiffs is implicitly raised and thus the Court will address the issue.

In general terms, “standing” defined as “[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.” *Black's Law Dictionary* 1625 (11th Ed.2019). *See*

also, *Ohio Pyro, Inc. v. Ohio Dept. of Commerce, Div. of State Fire Marshal*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 27. Article IV, Section 4(B) of the Ohio Constitution provides that courts of common pleas “shall have such original jurisdiction over all justiciable matters.” “A matter is justiciable only if the complaining party has standing to sue.” *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, 13 N.E.3d 1101, ¶ 11, citing *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 41. Thus, “[b]efore an Ohio court can consider the merits of a legal claim, the person or entity seeking relief must establish standing to sue.” *Ohio Pyro* at ¶ 27. In order to establish standing, litigants traditionally must demonstrate, at a minimum, that “they have suffered ‘(1) an injury that is (2) fairly traceable to the defendant’s allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.’ ” *ProgressOhio.org* at ¶ 7, quoting *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 22.

“[S]tanding does not depend on the merits of the plaintiff’s contention that particular conduct is illegal or unconstitutional,” but, instead, “turns on the nature and source of the claim asserted by the plaintiffs.” *Moore* at ¶ 23, citing *Warth v. Seldin*, 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Standing is not conferred on an entire case, but “ ‘[r]ather, “a plaintiff must demonstrate standing for each claim he [or she] seeks to press” and “ ‘for each form of relief’ ” that is sought.’ ” *Preterm-Cleveland, Inc. v. Kasich*, 153 Ohio St.3d 157, 2018-Ohio-441, 102 N.E.3d 461, ¶ 30, quoting *Davis v. Fed. Election Comm.*, 554 U.S. 724, 734, 128 S.Ct. 2759, 171 L.Ed.2d 737 (2008), quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352, 126 S.Ct. 1854, 164 L.Ed.2d 589 (2006), quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.*, 528 U.S. 167, 185, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000).

R.C. 733.56 authorizes the village solicitor or city director of law to seek an “injunction to restrain the [1] misapplication of funds of the municipal corporation, [2] the abuse of its corporate powers, [3] or the execution or performance of any contract made in behalf of the municipal corporation in contravention of the laws or ordinance[s] governing it, or which was

procured by fraud or corruption.” The abuse of corporate powers has been described as “the unlawful exercise of powers possessed by the corporation, as well as the assumption of power not conferred.” (Emphasis omitted.) (Citation omitted.) *Porter v. Oberlin*, 1 Ohio St.2d 143, 146, 205 N.E.2d 363 (1965). The solicitor or city director of law may also seek specific performance or mandamus pursuant to R.C. 733.57 and 733.58.

If the village solicitor or city director of law fails, upon the written request of any taxpayer of the municipal corporation, to make any application provided for in sections 733.56 to 733.58 of the Revised Code, the taxpayer may institute suit in his or her own name, on behalf of the municipal corporation. R.C. 733.59. R.C. 733.61 provides, in pertinent part, that “[i]f the court hearing a case under section 733.59 of the Revised Code is satisfied that the taxpayer had good cause to believe that his allegations were well founded, or if they are sufficient in law, it shall make such order as the equity of the case demands.” “Taxpayer actions, involving an abuse of corporate powers, are carefully restricted by court decisions.” *Ohioans for Concealed Carry v. City of Columbus*, 140 N.E. 3d 1215, 2019-Ohio-3015 (10th Dist), citing *Columbus ex rel. Willits v. Cremean*, 27 Ohio App.2d 137, 149, 273 N.E.2d 324 (10th Dist.1971).

[U]nlike under traditional principles of standing, a party seeking to bring a statutory taxpayer case must, in addition to satisfying the statutory requirements, demonstrate it is seeking to enforce a public right. *State ex rel. Fisher v. Cleveland*, 109 Ohio St.3d 33, 2006-Ohio-1827, 845 N.E.2d 500, ¶ 12, quoting *State ex rel. Caspar v. Dayton*, 53 Ohio St.3d 16, 20, 558 N.E.2d 49 (1990).

Further, with respect to actions brought under R.C. Chapter 733, the Ohio Supreme Court has defined "taxpayer" as "any person who, in a private capacity as a citizen, elector, freeholder or taxpayer, volunteers to enforce a right of action on behalf of and for the benefit of the public." *State ex rel. Nimon v. Springdale* (1966), 6 Ohio St.2d 1, 215 N.E.2d 592, paragraph two of the syllabus. Consistent with that definition, in order to have standing to bring a taxpayer suit under R.C. Chapter

733, the taxpayer's aim must be to **enforce a public right**, regardless of any personal or private motive. (emphasis added). *Cleveland ex rel. O'Malley v. White*, 148 Ohio App.3d 564, 2002-Ohio-3633, 744 N.E.2d 337, ¶ 45. Although a taxpayer's action is not prohibited merely because its proponent asserts rights that would confer a private, as well as a public, benefit, the claim may not go forward if it asserts rights that confer solely private benefits. *Id.*

Courts have found taxpayer standing in numerous cases in which the taxpayer's aim was the enforcement of a public right. See *Nimon*, 6 Ohio St.2d at 4–5, 35 O.O.2d 1, 215 N.E.2d 592 (taxpayer sued city to compel certification of referendum petition); *State ex rel. White v. Cleveland* (1973), 34 Ohio St.2d 37, 40, 63 O.O.2d 79, 295 N.E.2d 665 (taxpayer sued city for right to make copies of public records); *State ex rel. Cater v. N. Olmsted* (1994), 69 Ohio St.3d 315, 323, 631 N.E.2d 1048 (taxpayer sued city to enforce public's right to services of city official); *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 474, 715 N.E.2d 1062 (taxpayers sued to challenge on separation-of-powers grounds the enactment of “tort reform” legislation).

Furthermore, in *State ex rel. Cater v. N. Olmsted* (1994), 69 Ohio St.3d 315, 322–323, 631 N.E.2d 1048, 1054–1055, the Supreme Court of Ohio held that a taxpayer has standing as such to enforce the public's right to proper execution of city charter removal provisions, regardless of any private or personal benefit. While *Carter* involved a mandamus action that was brought pursuant to R.C. 733.59, which specifically provides for judicial review, the Supreme Court of Ohio has made clear that R.C. 733.56 through 733.61 merely codify the public-right doctrine as to municipal corporations, and that the doctrine exists independent of any statute authorizing invocation of the judicial process. *State ex rel. Nimon v. Springdale* (1966), 6 Ohio St.2d 1, 4–5, 35 O.O.2d 1, 3, 215 N.E.2d 592, 595.

Here, the remaining Plaintiffs are Brooke Handley and David Iannelli. Ms. Handley has lived in the 45036-zip code for the majority of life, including 11 years in Lebanon. (Handley Dep. 10:20-24). Further, Ms. Handley has resided in Lebanon, Ohio for all times relevant to this

action. (Handley Dep. 8:18-23). Likewise, Mr. Iannelli has resided in Lebanon, Ohio for all times relevant to this action. (Inanelli Dep. 10:2-5). There is no dispute that these Plaintiffs fit the definition of taxpayer.

However, it is apparent that the motivating force behind Plaintiffs litigation is the fact they do not agree with the Ordinance enacted by the City of Lebanon. The Complaint initially states there is a conflict between the Ordinance and the Ohio law. Next, The Complaint submits that the Ordinance interferences with the Plaintiffs' participation in the democratic process. The Complaint specifically states that "prior to the passage of the Ordinance, Iannelli intended to increase his attendance at City Counsel meetings, particularly as he transitions from full-time teaching to retirement in coming years." *Complaint* at 52. "In light of the Ordinance, however, Iannelli has decided that he can no longer attend City County meetings. The presence of concealed firearms at City Council meetings burdens Iannelli with prohibitive fear and stress, increases his risk of physical harm." *Id.* at 53. Notwithstanding these assertions, when Defendant Iannelli was questioned in discovery depositions as to why he does not go to city council meetings, Iannelli gave several reasons including being busy and COVID. *Iannelli Dep.* 66:22-67:17. Tellingly enough, Iannelli did not once state the Ordinance was the reason. See *Iannelli Dep.*

Similarly, in the Complaint states "The Ordinance has affected Handley's attendance at and participation in City Council meetings and work sessions. Specifically, she has experienced fear, anxiety, and discomfort, while attending City County proceedings." *Complaint* at 57. However, after the passage of the Ordinance, Hadley has attended significantly more City Council meetings and works sessions than she did prior to the enactment of the Ordinance. *Hadley Dep.* 78:15-79:18.

Stated another way, the Court genuinely questions whether the assertion of public participation in the democratic process is merely pretext for the Plaintiffs to bring their own

grievance against the city for the enactment of this Ordinance based on their individual beliefs and for their own benefit.

Notwithstanding the aforementioned concerns, the Court finds this case to be an analogous to *State ex rel. Carter v. N. Olmsted*, 69 Ohio St.2d 315, 323, 631 N.E.2d 1048 (1994). It is readily apparent the motive for this suit is Plaintiffs own beliefs and/or political motives, however, Plaintiffs have alleged sufficient facts to articulate they are attempting to enforce a public right, which is the ability to participate in the democratic process by attending city council meetings.

The Court finds Plaintiffs have standing in the above captioned case.

#### Home Rule Analysis

The Home Rule Amendment to the Ohio Constitution “confers a high measure of sovereignty upon municipalities, to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, are not in conflict with general laws.” *City of Cleveland v. Shaker Heights* (1987), 30 Ohio St.3d 49, 51 507 N.E.2d 323. See also, Ohio Const., art. XVII, sec. 3; *Cincinnati Bell Tel. Co. v. City of Cincinnati* (1998), 81 Ohio St.3d 599, 602, 693 N.E.2d 212.: “The power of local self-government and that of the general police power are constitutional grants of authority equivalent in dignity. A city may not regulate activities outside its borders, and the state may not restrict the exercise of the powers of self-government within a city. *Canton v. Whitman* (1975), 44 Ohio St.2d 62, 66, 337 N.E.2d 766. “It is the essence of home rule and of self-government that the sovereign body that has the power, whether described as a commission, council, assembly or otherwise, has the inherent power to carry on tis duties according to its own rules. Were it otherwise, home rule and self-government would become a fiction, and the purpose of the constitutional amendment would be denied.” *City Comm’n of Piqua v. Piqua Daily Call*, 64 Ohio App.2d 222, 225, 412 N.E.2d 1331 (2d Dist. 1979). Thus, “[t]he courts are sensitive to the home rule authority of municipalities because a disregard of that authority would be an effective



nullification of the constitutional right.” *Payphone Ass’n of Ohio v. City of Cleveland*, 146 Ohio App.3d 319, 328, 766 N.E.2d 167, 2001 Ohio App. LEXIS 4095 (8th Dist).

Ohio Courts have used a three-part test to evaluate conflicts under the Home Rule Amendment. “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 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.

*A. Conflict with State Statute*

In determining whether an ordinance is in conflict with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa. *City of Cincinnati v. Baskin* (2006), 112 Ohio St. 3d 279, 283 859 N.E.2d 514, 2006-Ohio-6422. Stated another way, “[n]o real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa. *Id.*

Here, Plaintiff submits the Ordinance is contrary to Ohio statute. More specifically, Plaintiffs assert the Ordinance conflicts with R.C. 2923.123(B), which prohibits the possession of deadly weapon or dangerous ordnance in the courthouse or I another building or structure in which a courtroom is located.

The Ordinance states in pertinent part:

“Section 1. That Section 508.13 of the Lebanon Code of Codified ordinances, attached hereto as Exhibit A and incorporated herein as if fully set forth, permitting licensed individuals to carry concealed weapons in the City Building located at 50 South Broadway, Lebanon, Ohio 45036, during times when Lebanon, Ohio Municipal Court is not in operation is hereby adopted pursuant to Section 3.02 of the Charter of the City of Lebanon, Ohio and section 2923.126(B)(7) of the Ohio Revised Code.”

Further the Ordinance states:

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

R.C. 2923.123 states in pertinent part: “(A) No person shall knowingly convey or attempt to convey a deadly weapon or dangerous ordnance into a courthouse or into another building or structure in which a courtroom is located. (B) No person shall knowingly possess or have under the person's control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located.

In addition there to, Plaintiff submits this Ordinance is in direct conflict with R.C. 2923.126(A).

R.C. 2923.126(A), provides that a licensed handgun owner “may carry a concealed handgun anywhere in this state,” except as provided in R.C. 2923.126(B) and (C). R.C. 2923.126(B) contains a list of exceptions to this right and sets forth specific locations where a licensed handgun owner may not carry a concealed handgun. R.C. 2923.126(B) states in pertinent part:

“A valid license issued under section 2923.125 or 2923.1213 of the Revised Code does not authorize the licensee to carry a concealed handgun in any manner prohibited under division (B) of section 2923.12 of the Revised Code or in any manner prohibited under section 2923.16 of the Revised Code. A valid license does not authorize the licensee to carry a concealed handgun into any of the following places: . . .

(B) . . .

(3) **A courthouse or another building or structure in which a courtroom is located**, in violation of section 2923.123 of the Revised Code . . .

(7) Any building that is a government facility of this state or a political subdivision of this state and that is not a building that is used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or **other building or structure in which a courtroom is located** that is subject to division (B)(3) of the section, unless the governing body with

authority over the building has enacted a statute, ordinance, or policy that permits a licensee to carry a concealed handgun into the building.” (emphasis added).

In determining whether there is a conflict or not, the Court must address the language in the statutes and Ordinance. First the Court will look to the term “courtroom”.

The Ohio Revised Code does not define courtroom. Merriam-Webster defines courtroom as “a room in which a court of law is held”. Black’s Law Dictionary defines courtroom as “[t]he part of a courthouse where trials and hearings take place, often one of many such parts, each one having a raised bench, a witness stand or box, an enclosed area for the jurors, an identical set of tables for counsel, and a gallery for observers.” Black’s Law Dictionary (11th ed. 2019).

The Ohio Supreme Court has offered guidance on this issue as it has stated:

A court is an incorporeal, political being, composed of one or more judges, who sit at fixed times and places, attended by proper officers, pursuant to lawful authority, for the administration of justice. It is only when a court is in session thus regularly constituted that it may lawfully perform its fixed and permanent functions, and it is in this sense that the term ‘court of common pleas is used in section 1707, General Code. On the other hand, by the provisions of section 11869, General Code, and other sections, the Legislature under authority of sections 4 and 18, art. 4, of the Constitution, has conferred upon ‘judges,’ as well as courts, certain power and authority in provisional matters, but by reference to those statutes it will be found that they are of a temporary and emergent nature, which may not always await the fixed, open session of the court.

*State ex rel. Hawke v. Le Blond* (1923), 108 Ohio St. 126, 133, 140 N.E. 510.

While the Ohio Rules of Superintendence does not have a specified definition of “courtroom”, it does offer guidance as to what decorum courtrooms should have. Such as, the rules provide that “every courtroom should have an elevated bench.” Rules of Superintendence, Appendix D, Section (C). Further, “uniformed court security officers should be assigned . . .” *Id.* at Standard 6(A).

Next in determining the definition of “courtroom”, the Court will look into the statutory language. In construing statutory language, we assign the words their plain, ordinary meaning

unless the General Assembly has clearly expressed a contrary intent. *Albright v. Limbach* (1988), 37 Ohio St.3d 275, 278, 525 N.E.2d 801. Additionally, we read undefined words and phrases in context and construe them according to rules of grammar and common usage. R.C. 1.42; *State ex rel. Plain Dealer Publishing Co. v. Cleveland*, 106 Ohio St.3d 70, 2005-Ohio-3807, 831 N.E.2d 987, ¶ 35. “As a further aid[ ] in determining the meaning of an undefined term, 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.” *The Limited, Inc. v. Commr. of Internal Revenue* (C.A.6, 2002), 286 F.3d 324, 332; *Bungard v. Dept. of Job & Family Servs.*, 10th Dist. No. 07AP-447, 2007-Ohio-6280, 2007 WL 4171105, ¶ 12. That maxim follows from the premise that “ ‘the coupling of words denotes an intention that they should be understood in the same general sense.’ ” \*752 *Wilson v. Stark Cty. Dept. of Human Servs.* (1994), 70 Ohio St.3d 450, 453, 639 N.E.2d 105, quoting 2A Sutherland, *Statutory Construction* (5 Ed.Singer Rev.1992) 183, Section 47.16.

Looking at the complete statute of 2923.126, the Ohio Legislature also prohibits handguns into school safety zones. See R.C. 2923.126(B)(2). A school safety zone is defined by statute to include schools, school buildings, and school premises “whether or not any instruction, extracurricular activities, or training provided by the school is being conducted . . . at the time.” R.C. 2923.126(B)(2), 2923.122, 2901.01 (Quoting R.C. 2925.01).

The General Assembly specifically provided temporal specificity as it pertains in the context of controlling when and where an individual can carry concealed weapons in a safety school zone. A plain reading of the statute indicates that the General Assembly clearly desired there should never be any guns in a school safety zone, even when school is not in session. Had the General Assembly wanted to have that result when it comes to buildings which contain courtrooms, it would have included the same language. Since the General Assembly intentionally did not include language of any temporal specificity, it is inferred it did not desire to have such a blanket prohibition.

Based on the reading of the statute, the Court finds there to ambiguity. The ambiguity does not pertain in the definition of “courtroom” but lies in temporal limitation. The question before the Court is as follows: does a courtroom have a temporal limitation if it is used for other legitimate purposes while there are no court functions in process? This Court holds that it does and it is only a courtroom when the court itself is actively engaged in any court function.

The Court wants to stress the narrowness of this decision as it is not to make a blanket determination as to when a multipurpose room is considered a courtroom, or to address the temporal limitation of other multipurpose rooms, but instead, this analysis is applied to the specific building in which this specific courtroom is located. The Court finds that applying a temporal specificity to the term courtroom is consistent with statutory interpretation and caselaw.

To get to this holding, the Court analyzed the unique set of facts. The courtroom at issue is located in the Lebanon City Building. This room where Lebanon Municipal holds court is also used for several other purposes. This room is used as a courtroom for a criminal and traffic docket on Mondays beginning at 1:00 p.m., a civil docket that is held on Tuesdays at 1:00 p.m., and a criminal traffic docket on Thursdays beginning at 1:00 p.m. *Hubbell Dep.* 60: 2-12. Trials can be scheduled during the docket times or off docket times. *Id.* The earliest trial would be scheduled is 8:00 a.m. *Id.* at 23-24. Dockets and trials can go longer, but the Court usually concludes by 4:00 p.m. daily. *Hubbell Dep.* 63-66. When Judge Hubbell was a civil magistrate in the Lebanon Municipal Court, it was his practice to have the clerk to get in touch with the city to ensure there was no scheduling conflict if he was scheduling trials or hearings on off docket dates. *Id.* 111: 1-7. Furthermore, Lebanon Municipal Court Clerk of Courts is opened from 8:00 a.m. to 4:00 p.m. Monday through Friday. It is important to note that the Lebanon Municipal Court holds its hours as 8:00 a.m. to 4:00 p.m. Monday through Friday, regardless if a docket is in session. *Brunka Aff.* 18, Exhibit A.

However, when the court is not in session, the room is used for other purposes. For example, the room is used for Lebanon City Council Meetings, Lebanon Board of Zoning

Appeals meetings, Lebanon Planning Commission meetings, wellness seminars sponsored by the City for its employees and other employee meetings and celebrations. *Brunka Aff.* at 4.

More specifically, City County meetings are held in this room on the second and fourth Tuesday of each month at 7:00 p.m. *Brunka Aff.* at 5. Lebanon Board of Zoning Appeals meetings are held in this room the first Wednesday of every month at 5:30 p.m. *Id.* at 6. Lebanon Planning Commission meetings are held in this room the third Tuesday of each month at 7:00 p.m. *Id.* at 7.

It is important to note the transformations the room undertakes in order to be set up as a courtroom. Lebanon Municipal Court sets up and uses a security screening machine when the Court holds its civil and criminal dockets. *Dunavent Aff.* 5, 6; *Brunka Aff.* at 11. The Court sets up the security machine outside of the courtroom prior to the docket beginning. *Hubbell Depo.* 111-113. Each time this screening machine is used, the court's security, who are employed solely by the Lebanon Municipal Court, must gather the machine's key, power cord, and other items from a locked closet to set up and run the machine. *Dunavent Aff.* at 7. At the conclusion of dockets and trials, the security machine is shut down and the contents are locked up. *Id.* at 8. This security machine is not used for any other non-court use. *Id.* at 10; *Brunka Aff.* at 12.

Further, inside the room there is a long semi-circle table or structure, with a chair behind it. This is where city counsel members sit during their meetings. *Id.* at 11; *Brunka Aff.* 13. A hydraulic system has been installed in the seat of the middle portion of the long table between the two flags. *Dunavent Aff.* 12-14; *Brunka Aff.* 14; *Hubbell Depo.* 151-151; Exhibit 3. When Lebanon Municipal Court is in session, this hydraulic system is used to elevate the table to create a bench, in accordance with the Rules of Superintendence. *Id.* The Bench is not raised during any other use of the room or for any other meeting. *Dunavent Aff.* 12-14; *Hubbell Depo.* 151:18-153:8.

Stated another way, the Lebanon Municipal Court takes affirmative actions to transform this room into a courtroom to be in compliance with the Rules of Superintendence. It also takes action to transform it into a multipurpose room when court is not being held.

Plaintiff argues that Ohio law does not contemplate any temporal limitation on the prohibition of handguns in a building with a courtroom. In support they argue that the Ohio Judicial Conference's model jury instructions do not include any instruction to jurors to consider whether the relevant court was operating at the time of the violation. OJI-CR 523.123 states:

"1. 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).

This argument holds little weight. R.C. 2923.126 clearly includes a temporal specificity as to school zones, however the OJI does not. OJI-CR 523.122 states in pertinent part:

1. The defendant is charged with (illegal conveyance or possession of a [deadly weapon] [dangerous ordnance]) (possession of an object indistinguishable from a firearm) in a school safety zone. 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  
(A) (conveyed) (attempted to convey) a (deadly weapon) (dangerous ordnance) into a school safety zone;  
(B) possessed a (deadly weapon) (dangerous ordnance) in a school safety zone;  
(C) possessed an object in a school safety zone and both the following apply:  
(1) the object was indistinguishable from a firearm regardless of whether it was capable of being fired; and  
(2) the defendant

- (a) indicated that he/she possessed the object and indicated that the object was a firearm;
- (b) knowingly (displayed) (brandished) the object and indicated that it was a firearm.

This OJI clearly does not include a temporal specificity, yet the statute at hand does and thus, reliance on OJI is not proper.

The Court finds, based on a reading of the statutes, applicable case law and definitions, that the multipurpose room in the Lebanon City Building is a “courtroom” only during times court functions are occurring. The other times when court functions are not being conducted, the room is physically transformed into a multipurpose room and not held out to be a courtroom.

Next, Plaintiff argues that the plain language of the statute directly conflicts with the Ordinance. Likewise, the Court does not find this argument persuasive. The Ordinance prevents individuals from carrying concealed weapons in the City Building while Lebanon Municipal Court is in operation. Stated another way, the Ordinance prevents individuals from carrying a concealed weapon in the City Building while there is a courtroom, or court functions are being held. Likewise, the Ohio Revised Code prevents individuals from carrying a concealed weapon in a building which contains a courtroom. Applying the temporal limitation to “courtroom” it is apparent the language of these statutes and the Ordinance mirror each other, and the purposes are identical. Thus, the Court finds the Ordinance does not conflict with state or local law.

Since, there is no conflict with state or local law, the Court finds this Ordinance is a valid exercise of the City of Lebanon’s Home Rule Authority. Accordingly, the Court finds that there is no genuine issue as to material facts and Defendants are entitled to judgment as matter of law as to Count One

#### *Count II – Declaratory Judgment*

A declaratory judgment action provides a means by which parties can eliminate uncertainty regarding their legal rights and obligations. *Travelers Indemn. Co. v.*



*Cochrane* (1951), 155 Ohio St. 305, 312, 44 O.O 302, 98 N.E.2d 840. An insurer may institute a declaratory judgment action to determine "its rights and obligations under a contract of insurance." *Preferred Risk Ins. Co. v. Gill* (1987), 30 Ohio St.3d 108, 30 OBR 424, 507 N.E.2d 1118, paragraph one of the syllabus.

Although broad in scope, the declaratory judgment statutes are not without limitation. Most significantly, in keeping with the long-standing tradition that a court does not render advisory opinions, they allow the filing of a declaratory judgment only to decide "an actual controversy, the resolution of which will confer certain rights or status upon the litigants." *Corron v. Corron* (1988), 40 Ohio St.3d 75, 79, 531 N.E.2d 708. Not every conceivable controversy is an actual one. As the First District aptly noted, in order for a justiciable question to exist, "[t]he danger or dilemma of the plaintiff must be present, not contingent on the happening of hypothetical future events \* \* \* and the threat to his position must be actual and genuine and not merely possible or remote." *League for Preservation of Civil Rights v. Cincinnati* (1940), 64 Ohio App. 195, 197, 17 O.O. 424, 28 N.E.2d 660, quoting Borchard, *Declaratory Judgments* (1934) 40.

The Court finds that Plaintiffs do have standing to bring this suit. However, the Court finds that there is no genuine issue as to material fact. Based on the previous analysis, the Court finds the Ordinance at issue is a proper exercise of Lebanon's Home Rule Authority. Thus, Defendants are entitled to judgment as a matter of law.

#### **Conclusion**

Construing the evidence in the light most favorable to the non-moving parties, the Court finds that Defendants have established that there is no genuine issue of material facts and they are entitled to judgment as a matter of law. Therefore, Plaintiffs motion for summary judgment is hereby **DENIED**. Defendants' motion for summary judgment is hereby **GRANTED**.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "Timothy Tepe". The signature is written in a cursive style with a horizontal line extending from the end.

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**JUDGE TIMOTHY N. TEPE**  
**Warren County Common Pleas Court**