IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

JOHN DOE 1, et al., Plaintiffs, vs. CITY OF COLUMBUS, et al., Defendants.	)	CASE NO: 23-cv-H-02-0089 JUDGE: DAVID M. GORMLEY

MEMORANDUM CONTRA OF PLAINTIFFS TO DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT OR, IN THE ALTERNATIVE, TO TRANSFER VENUE FILED MARCH 24, 2023

INTRODUCTION

On December 6, 2022, the City of Columbus enacted ordinance No. 3176-2022 (the "Ordinance"), which, among other things, ostensibly criminalized the mere possession of certain firearm magazines anywhere in the City of Columbus and criminalized certain firearm storage practices. Am. Compl. Ex. A. The regulations enacted in the Ordinance were invalid based on three grounds. First, the Ordinance enacted firearms restrictions greater than those provided by state or federal law, in violation of R.C. 9.68. Second, the magazine ban was void for vagueness as being internally contradictory—both banning and permitting 30-round magazines. Third, the Ordinance violated Article I, Section 4 of the Ohio Constitution because it was not a reasonable restriction on firearms and was inconsistent with the historical regulations of firearms in Ohio.

On February 16, 2023, Plaintiffs John Doe 1–4 and Jane Doe filed suit against Defendants seeking declaratory and injunctive relief. On February 21, 2023, Defendants filed their Motion to Dismiss or, in the Alternative, to Transfer Venue ("Defs.' MTD Compl."). On March 7, 2023,

Plaintiffs filed their opposition to Defendants' motion to dismiss the Complaint.

On February 27, 2023, the Columbus City Council enacted ordinance 0680-2023 (the "New Ordinance"). Am. Compl. Ex. H. The New Ordinance explicitly repealed Columbus City Codes 2323.11, 2323.23, and 2323.321. *Id.* On March 10, 2023, Plaintiffs filed their Amended Complaint to add a new Plaintiff—John Doe 5—and to challenge the regulations enacted in the New Ordinance. Am. Compl. Plaintiff John Doe 5 is a resident of Columbus, and his house is located in Delaware County. Am. Compl. Ex. G. This is relevant to the Defendants' arguments relative to their alternate motion to transfer venue. The regulations enacted in the New Ordinance are also invalid based on R.C. 9.68 and Article I, Section 4 of the Ohio Constitution. On March 24, 2023, Defendants filed their Motion to Dismiss Amended Complaint or, in the Alternative, to Transfer Venue ("Defs.' MTD Am. Compl."). Defendants' Motion to Dismiss Amended Complaint or, in the Alternative, to Transfer Venue must be denied.

First, Defendants seek to dismiss the case because Plaintiffs' have sought to proceed pseudonymously. Defendants' claims lack merit for three reasons. First, the Ohio Supreme Court has authorized proceeding pseudonymously. Second, Plaintiffs have sought leave from the court to proceed pseudonymously, which Defendants admit "alleviate[s] [the Defendants'] jurisdictional concerns." Defs.' MTD Am. Compl. At 7. Third, even if pseudonymous filings were an issue of personal jurisdiction, Defendants have not raised personal jurisdiction and so have waived that affirmative defense.

Second, Defendants seek to dismiss the case based on the jurisdictional-priority rule. That rule does not apply here. The Plaintiffs were not parties to the cases the Defendants asked this court to take judicial notice of, which are in Franklin and Fairfield Counties. Defs.' MTD Am. Compl. At 5. Nor are Plaintiffs substantially similar to the parties involved. Those cases involve

the State of Ohio and the City of Columbus. *See* Compl. At ¶ 49–50. Further, the Defendants make the odd claim that they will be "forced" to destroy jurisdiction by impleading the State. That will not work.

Third, the Defendants also seek a change in venue. But the Defendants do not dispute that a portion of Columbus is located in Delaware County or that any person possessing a 30-round magazine in the portion of Columbus located in Delaware is subject to the city's criminal ordinances. Further, John Doe 5 resides in the portion of the City of Columbus that is located within Delaware County, and his firearms and 30-round magazines are stored at his home there. These facts establish that Delaware County is a proper venue.

Defendants' Motion to Dismiss Amended Complaint or, in the Alternative, to Transfer Venue must be denied.

LAW AND ARGUMENT

I. The legal standard for a motion to dismiss.

The question presented by a Civ.R. 12(B)(1) motion to dismiss is "whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush* v. *Spurlock*, 42 Ohio St.3d 77, 537 N.E.2d 641, 644 (1989). Civ.R. 12(B)(1) questions whether the court has jurisdiction over the *subject matter* of the claims. Additionally, "[a] trial court is not confined to the allegations of the complaint when determining its subject-matter jurisdiction under Civ.R. 12(B)(1), and it may consider pertinent material." *PNC Bank, Natl. Assn.* v. *Botts*, 10th Dist. Franklin No. 12AP-256, 2012-Ohio-5383, ¶ 21.

II. This court has subject matter jurisdiction to hear claims brought by pseudonym plaintiffs.

Defendants claim that this court does not have subject matter jurisdiction because Plaintiffs

filed the Complaint and Amended Complaint pseudonymously. This claim is without merit.

A. The Ohio Supreme Court has allowed using pseudonyms when filing a complaint.

As set forth more fully in Plaintiffs' Motion for Leave to Proceed Pseudonymously (incorporated by reference hereat), Plaintiffs have a significant privacy interest in proceeding pseudonymously. "The practice of proceeding under a pseudonym is well established in Ohio * * *." *Doe* v. *Bruner*, 12th Dist. Clinton No. CA2011–07–013, 2012-Ohio-761, ¶ 4 (collecting cases). Just last year, the Ohio Supreme Court again recognized that a court may excuse a plaintiff from identifying himself in certain situations. *State ex rel. Cincinnati Enquirer* v. *Shanahan*, 166 Ohio St.3d 382, 2022-Ohio-448, 185 N.E.3d 1089, ¶ 36.

None of these cases—nor the Sixth Circuit case relied on by the Ohio district court in *Doe* v. *Bruner*—have indicated that a plaintiff filing a complaint before seeking leave from the court to do so deprives the court of subject matter jurisdiction. Even the Sixth Circuit case cited by Defendants does not say that a plaintiff must first seek leave from the court before filing a complaint under a pseudonym. In *Marsh*, the Sixth Circuit only noted that "[*o*]*rdinarily*, a plaintiff wishing to proceed anonymously files a protective order that allows him or her to proceed under a pseudonym." (Emphasis added.) *Citizens for a Strong Ohio* v. *Marsh*, 123 Fed.Appx. 630, 636 (6th Cir.2005)[1], citing *Doe* v. *Porter*, 370 F.3d 558, 560 (6th Cir.2004). Yet, the court only upheld the dismissal of a plaintiff who had initially filed as John Doe because he had "not alleged sufficient facts to be permitted to proceed with his claim." (Emphasis added.) *Id.* Further, in *Porter*—cited by *Marsh*—the Sixth Circuit affirmed the district court's decision to allow the Doe plaintiff to proceed pseudonymously.

The argument that a court must grant permission to file pseudonymously to have subject

[1] *Marsh* is an unpublished decision with limited precedential value, even in federal courts. Moreover, "federal court cases are not binding on [state courts]." *Dewine* v. *State Farm Ins. Co.*, 2020-Ohio-5517, 163 N.E.3d 614, ¶ 31 (4th Dist.).

matter jurisdiction is illogical. As Defendants previously admitted, this court has "general jurisdiction of the subject matter of this dispute." Defs.' MTD Compl. at 8. A court cannot create subject matter jurisdiction by sanctioning an act. The Ohio Constitution gives only the General Assembly the power to define the limits of the common pleas courts' jurisdiction. *State* v. *Wilson*, 73 Ohio St.3d 40, 42, 652 N.E.2d 196 (1995), citing Article IV, Section 4(B), Ohio Constitution. "The General Assembly has given the common pleas courts subject-matter jurisdiction over all civil cases that it has not expressly excluded from their jurisdiction." *Pivonka* v. *Corcoran*, 162 Ohio St.3d 326, 2020-Ohio-3476, 165 N.E.3d 1098, ¶ 21, citing *Bank of Am., N.A.* v. *Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.2d 1040, ¶ 20. At no point has the General Assembly provided that pseudonymous filings are impermissible. And, the Ohio Supreme Court has clarified that pseudonymous filings are permissible in certain circumstances. Thus, a court's subject matter jurisdiction exists regardless of the plaintiffs' names.

Because the Ohio Supreme Court has sanctioned pseudonymous filings, and the General Assembly has not limited the common pleas courts' jurisdiction in the matter, this court has subject matter jurisdiction to hear the Plaintiffs' pseudonymously filed claims.

B. Plaintiffs filed their Motion for Leave to Proceed Pseudonymously before filing their Amended Complaint.

Defendants admit that "[u]nnamed plaintiffs can alleviate jurisdictional concerns by seeking 'permission to proceed anonymously * * * .'" Defs.' MTD Am. Compl. at 7 (citation omitted). Defendants even acknowledge that "Plaintiffs John Doe (1 through 4) and Jane Doe[] previously filed [a] motion for leave to proceed pseudonymously several days after they filed their original complaint * * * ." *Id.* Contrary to Defendants reading of Plaintiffs' motion for leave, Plaintiffs motion sought leave to proceed with the action in its entirety—it was not limited to the original Complaint. Instead, because "Plaintiffs meet the standards of the Ohio Supreme Court to

proceed pseudonymously," Plaintiffs requested permission "to continue to proceed in such fashion." Plaintiffs' Motion for Leave to Proceed Pseudonymously at 1. Defendants provide no support for their claim that Plaintiffs' "previously filed motion for leave to proceed pseudonymously" does not apply to Plaintiffs ongoing prosecution of this action after filing the Amended Complaint.

As such, this court should deny Defendants' motion to dismiss and grant Plaintiffs' Motion for Leave to Proceed Pseudonymously.

C. Even if pseudonymous filing was a personal jurisdictional issue, Defendants have waived any challenge by not properly pleading the defense.

Under Civ.R. 12(B), "Every defense, in law or fact, to a claim for relief in any pleading * * * shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person * * * ."

> A party who makes a motion under this rule must join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter assert by motion or responsive pleading, any of the defenses or objections so omitted * * * .

Civ.R. 12(G). "A defense of lack of jurisdiction over the person * * * is waived (a) if omitted from a motion in the circumstances described in subdivision (G) * * * ." Civ.R. 12(H).

Both Defendants' motion to dismiss the Complaint and their current motion to dismiss the Amended Complaint only raise challenges under 12(B)(1)—lack of subject matter jurisdiction—and not 12(B)(2)—lack of personal jurisdiction. Defs.' MTD Am. Compl. at 1 ("This Court lacks subject-matter jurisdiction to hear this case because (1) Plaintiffs have failed to meet the

requirements to proceed pseudonymously * * * ."). Defendants claim "this Court lacks jurisdiction *over the unnamed parties* * * * ." Defs.' MTD Am. Compl. at 7. The claim that the court lacks jurisdiction over the parties is categorically a lack of *personal* jurisdiction argument and not a lack of *subject matter* jurisdiction argument. This court, of course, has personal jurisdiction over the Plaintiffs because they "submitted to the court's jurisdiction by filing the complaint." *Moore* v. *Mt. Carmel Health Sys.*, 162 Ohio St.3d 106, 2020-Ohio-4113, 164 N.E.3d 376, ¶ 34.

As such, Defendants motion to dismiss for lack of *subject matter* jurisdiction must be denied as pseudonymous filing is not a subject matter jurisdiction question. Further, any claim that the court lacks personal jurisdiction has been waived.

III. The jurisdictional-priority rule is inapplicable to this case.

The jurisdictional-priority rule does not apply to this case. Under the jurisdictional-priority rule, "[a]s between courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon *the whole issue* and to settle the rights of *the* parties." (Emphasis added.) *State, ex rel. Phillips* v. *Polcar,* 50 Ohio St.2d 279, 364 N.E.2d 33 (1977). There are two important and distinct requirements for the jurisdictional-priority rule to apply.

> In *State ex rel. Dunlap* v. *Sarko*, 135 Ohio St.3d 171, 2013-Ohio-67, 985 N.E.2d 450, ¶ 10-11, the Supreme Court of Ohio explained: "To be sure, it is a condition of the jurisdictional-priority rule that the claims and parties be the same in both cases, so '[i]f the second case is not for the same cause of action, nor between the same parties, the former suit will not prevent the latter.'" *See State ex rel. Judson v.*

Spahr, 33 Ohio St.3d 111, 113, 515 N.E.2d 911 (1987).

Gilcrest v. *Gilcrest*, 5th Dist. Delaware No. 22 CAE 03 0019, 2022-Ohio-3640, ¶ 34–35.

In the Fifth District,

> "The determination of whether two cases concern the same 'whole issue' is a two-step analysis. *First*, there must be cases pending in two different courts of concurrent jurisdiction *involving substantially the same parties*; and second, the ruling of the court subsequently acquiring jurisdiction may affect or interfere with the resolution of the issues before the court where suit was originally commenced."

(Emphasis added.) *Centerburg RE, LLC* v. *Centerburg Pointe, Inc.*, 5th Dist. No. 13 CA 28, 2014-Ohio-4846, 22 N.E.3d 296, ¶ 45, quoting *CWP Ltd. Pshp.* v. *Vitrano*, 8th Dist. Cuyahoga No. 71314, 1997 WL 253156 (May 15, 1997).

Plaintiffs are not named—nor substantially the same as—any party in the previous cases, and no court has obtained jurisdiction over the whole issue involved in this case.

A. Plaintiffs were not parties to the Franklin or Fairfield County cases, and Plaintiffs are not substantially the same as any party in those cases.

The simple fact is that Plaintiffs were not parties to either the Franklin or Fairfield County cases. Defendants initially skip over this "first" step. Defendants eventually turn to this first step and—despite the obvious fact that Plaintiffs were not parties to the prior cases—attempt to cure the gap in their argument with a glib suggestion that John and Jane Doe Plaintiffs are somehow substantially[2] the same as the parties in those other cases. They oddly assert that "private citizens[]

[2] Defendants only cited case where the "substantially [] same parties" were not the *exact* same parties is *Davis* v.*Cowan Sys.*, 8th Dist. Cuy. No. 83155, 2004-Ohio-515. That case involved a three-car motor vehicle accident. All three drivers sued or were sued. In the second-filed case the Plaintiff would have been a witness in the first case and the court further explained that "it may have been improper to proceed with the [first filed] action [in Portage County] without adding [Davis] to the action." *Id.* at 16. Given that both cases involved the exact same accident with all of the same parties, the court held that the jurisdictional-priority rule required the dismissal of the second filed action. Here, as explained, the State of Ohio and the Plaintiffs are not even remotely the same and there are significant other differences in the claims presented.

do not exist 'separate and apart' from the rest of Ohio * * * ." Defs.' MTD Am. Compl. at 14. This argument is without merit, and the only case Defendants cite in support (*Centerburg RE*) supports Plaintiffs, not the Defendants. The City of Columbus and the State of Ohio are quite obviously separate entities from the residents of the City and the State. Defendants' argument essentially wants to disregard the separate entity status of a city or state by equating them and all their constituents as one and the same. The ramifications of this argument are varied and ultimately ludicrous. Under Defendants' arguments, individual citizens and residents, such as the Doe Plaintiffs, would be entitled to sovereign immunity from a multitude of suits because they would be the same as the State. And the State could not prosecute individual citizens because they are one and the same as the State. This—of course—is not the relationship the individual Plaintiffs have with the State. Defendants provide no legal support for their illogical assertions and, in fact, argued contrary to this point in other cases.

1. *Columbus* v. *State* Franklin C.P. 2019-cv-2281.

In the Franklin County case, the City—a government entity—filed suit against the State—another government entity—claiming a state law violated the constitutional rights *of the City*. This was purely a suit against the State as the entity responsible for creating state law. The John and Jane Doe Plaintiffs—who are individuals—were not parties in the Franklin County case.

2. *State* v. *City of Columbus*, Fairfield C.P. 2022-cv-00657.

The Fairfield County case involves the State of Ohio suing the City of Columbus, the reverse of the Franklin County case. In Fairfield, the City regarded the State as a sovereign—who is unable to bring a cause of action on behalf of the residents of Ohio. Here, the city argues the opposite to make Plaintiffs appear to be the same party as the State.

When the State filed suit in Fairfield, it claimed to have standing "*as a sovereign* * * * to enforce the rights of its citizens, and to protect those rights from infringement by political

subdivisions of this State." (Emphasis added.) Am. Compl. at 6, *State* v. *City of Columbus*, Fairfield C.P. 2022-cv-00657 (Dec. 15, 2022). The State also claimed to have standing "to ensure that political subdivisions of this State do not legislate in contravention of the authority delegated to them." *Id.* The State did not argue that it represents individual residents of Columbus, only that it is a sovereign. Indeed, there is no indication that individual residents retained the Attorney General's office to represent them individually. In this case, John and Jane Does engaged the undersigned counsel to represent them.

In *State* v. *City of Columbus*, the City of Columbus argued that the State's claim that Columbus residents might be subject to criminal prosecution "does not in any way affect the state." Defs.' Memo Contra Mot. for Prelim. Inj. at 4–5, *State* v. *City of Columbus*, Fairfield C.P. 2022-cv-00657 (Dec. 27, 2022). The City of Columbus argued that harm to individuals is not the same as harm to the State. *Id.* at 4–5.

The City of Columbus also argued that the State lacked standing to represent the citizens of Ohio. Defs.' Post-Hr'g Br. at 10–11, *State* v. *City of Columbus*, Fairfield C.P. 2022-cv-00657 (Jan. 17, 2023). Rather, the City of Columbus argued, "[n]one of the cases cited by the [State] lend support to its arguments for standing to file litigation to enforce individual constitutional rights [such as Article I, Section 4]." *Id.* Once again, making clear that the City of Columbus does not regard harm to Plaintiffs the same as harm to the State.

Finally, the City of Columbus distinguished the State's citations to State ex rel.—or on behalf of—attorney general cases from the Fairfield case, claiming that the State was suing on its own behalf—and not on behalf of anyone else. *Id.* at 11; Defs.' Memo Contra Mot. for Prelim. Inj. at 6–7, *State* v. *City of Columbus*, Fairfield C.P. 2022-cv-00657 (Dec. 27, 2022) ("It is *not* the Attorney General who is the Plaintiff in the case at bar, it is the State of Ohio."). The Fairfield case

was not *State ex rel. Citizens of Columbus* v. *City of Columbus*. As the City of Columbus argued, Fairfield is a suit between the State entity and the city entity. These government entities are separate and apart from the people. *See* Defs.' MTD Am. Compl. at 13 ("the divorcing couple were not parties to the Knox County case; rather, that case involved only the business entities owned by each, respectively, which existed *'separate and apart' from them personally*.").

Because the Plaintiffs were not parties to the Franklin or Fairfield cases and are not substantially the same as the government entities in those cases, the first prong of the jurisdictional-priority rule fails.

B. Neither Franklin nor Fairfield has claimed jurisdiction over the whole issue of the Plaintiffs' claims.

A ruling by this court will not affect or interfere with the resolution of the issues before the Franklin or Fairfield courts. The John and Jane Doe Plaintiffs are challenging the regulations enacted by the Ordinance and the New Ordinance based on three causes of action. Those regulations are preempted by R.C. 9.68 and violate Article I, Section 4 of the Ohio Constitution; and the regulations originally enacted by the Ordinance were unconstitutionally void for vagueness. No other court has exercised jurisdiction over the whole issue of claims—especially as of the filing of the original Complaint.

The Franklin County case does not challenge or even reference the regulations enacted in the Ordinance or the New Ordinance. Indeed, that case could not do so because it was filed three years prior to the enactment of the Ordinance and the New Ordinance. As such, the conflict between R.C. 9.68 and the regulations enacted in the Ordinance are not at issue in the Franklin case.

Defendants' next claim—that "[a]ny subsequent ruling by this Court now in favor of Plaintiffs would certainly and immediately interfere with [the Franklin court's] existing orders"—

ignores the procedural posture of the Franklin case. Defs.' MTD Am. Compl. at 14. But the judgment in the Franklin County case was stayed by the trial court and a ruling by this court cannot interfere with a ruling that is no longer in force. Further, as of the time of filing this memorandum, the Franklin case is on appeal and out of the common pleas court's hands. Defendants have not adequately articulated how this court's actions could "affect or interfere with the resolution of the issues before" the Franklin County court.

The Fairfield County case does challenge the magazine ban as enacted by the Ordinance. As currently pending, the case only involves a challenge based on Article I, Section 4 of the Ohio Constitution, but that court is not considering a claim that it violates R.C. 9.68.[3] That case also does not include the void for vagueness claim asserted in this case and does not challenge the magazine ban as enacted by the New Ordinance. Finally, it does not address the issues raised by the enforcement mechanisms enacted by the New Ordinance because those enforcement mechanisms did not exist at the time of the filing of the Fairfield case. *See* Am. Compl., *State* v. *City of Columbus*, Fairfield C.P. 2022-cv-00657 (Dec. 15, 2022). And, as with the Franklin County case, Defendants have not articulated how a ruling in this case would "affect or interfere with the resolution of the issues before" the Fairfield County court.

C. Defendants' threat of destroying jurisdiction by impleading the State is without merit.

Defendants make the odd threat that if the court does not dismiss the case, the Defendants will be "forced to file a cross-claim against the State of Ohio contesting the constitutionality of R.C. 9.68" to destroy jurisdiction. Defs.' MTD Compl. at 10; Defs.' MTD Am. Compl. at 11. Whether or not the Defendants *could* somehow bring in the State via interpleader or a cross-claim

[3] The Fairfield court dismissed a 9.68 preemption claim, but not on the merits. The State of Ohio has appealed that ruling.

of some sort is not before the court. However, the Defendants have claimed that this court lacks subject matter jurisdiction because Defendants could hypothetically try to do that, and then, the jurisdictional-priority rule would apply. It is truly a peculiar assertion that the court should dismiss this case based on a hypothetical motion of questionable validity.

Defendants' threats to take actions to destroy jurisdiction are unserious and without merit.

D. Our judicial system expects different courts to address the same constitutional issues as long as the jurisdictional-priority rule does not preclude it.

Defendants argue that this court should dismiss or transfer this case because another common pleas court has addressed the validity of the Ordinance—in a case involving different parties and different legal theories. That is wrong.

The jurisdictional-priority rule is based on the concept of judicial economy but also anticipates that every litigant has a right to assert his or her legal claims—even if others have litigated similar claims elsewhere. Ohio courts of common pleas are bound by judicial precedent within their own district—but not by other common pleas courts or even other district courts of appeals. Similarly, district courts of appeals are not bound by the rulings of other district courts. However, all common pleas and district courts are bound by the Ohio Supreme Court. The Ohio Supreme Court has twice held that R.C. 9.68, the relevant statute here, is constitutional. The city of Columbus and the Franklin County Common Pleas Court ignored the Ohio Supreme Court. Now the issue must again move its way to the Ohio Supreme Court for a third time. The Ohio Supreme Court's rules anticipate that not all courts will reach the same results on legal issues. One of the primary factors the Supreme Court considers in determining if it should take cases is if there is a conflict between district courts on the same issue. S.Ct.Prac.R. 8.01; Article IV, Section 3, Ohio Constitution.

In an alternative argument to the jurisdictional-priority rule, Defendants ask this court to

forego ruling on this matter out of comity. Defs.' MTD Am. Compl. at 16 n.5. But the rule of comity applies to states' option to recognize the judgement of "foreign judicial decisions." *Sargsyan* v. *Martirosyan*, 10th Dist. Franklin No. 21AP-2, 2021-Ohio-4576, ¶ 19.[4] This means other states or countries. Defendants have not cited any cases suggesting that comity as it has been applied in Ohio has anything to do with one common pleas court deferring to other common pleas courts of the same state.

In any event, this court should not give deference to the Franklin County Common Pleas Court's decision that ruled contrary to clear Ohio Supreme Court precedent. Even the Tenth District has strongly disagreed with the Franklin County court's decision, stating that

> The trial court's order does not merely disrupt the status quo in an abstract sense, but it displaces a longstanding statute, which had the stated purpose of promoting clarity and uniformity of regulation of firearms throughout the state, and replaces it with uncertainty and a patchwork of laws. *See Ohioans for Concealed Carry*, 120 Ohio St.3d 96, 2008-Ohio-4605, at 1 20. Thus, there is an immediate impact and harm, both to the state's interest and also to individuals in jeopardy of criminal prosecution under the newly enacted city code provisions. The state is further harmed by the enjoining of the original version of R.C. 9.68 on grounds rejected by the Supreme Court over a decade ago.

Decision, *City of Columbus* v. *State*, 10th Dist. No. 22AP-676 (Jan. 24, 2023).

In the context of the commonly known rules of precedent and the Ohio Supreme Court's rules, a court is not obliged to dismiss or transfer a case just because another court has considered or is considering a similar issue. As such, the Defendants' motion to dismiss should be denied, and

[4] *Sargsyan* dealt with comity as pertained to an Ohio's recognition of a divorce decree granted in Canada.

the court should proceed with this case.

IV. Delaware County is a proper venue because the City of Columbus—and its ordinances—protrude into Delaware, affecting Plaintiffs.

Defendants have failed to satisfy their burden of showing that venue is not proper in Delaware County. "Venue is a procedural matter concerned with choosing a convenient forum and raises no jurisdictional implications." *Hoelscher* v. *ICS 1 Ltd.*, 5th Dist. Richland No. 18CA77, 2019-Ohio-3304, ¶ 22, quoting *In re W.W.*, 190 Ohio App.3d 653, 2010-Ohio-5305, ¶ 25 (11th Dist.). "More specifically, '[i]mproper venue does not deprive a court of its jurisdiction to hear an action.'" *Id.*, quoting *Cheap Escape Co., Inc.* v. *Haddox, L.L.C.*, 10th Dist. Franklin No. 06AP–1107, 2007-Ohio-4410, ¶ 11. "[I]n a motion for change of venue, the moving party bears the burden of proof." *Sheet Metal Workers Local 98, Pension Fund* v. *Whitehurst*, 5th Dist. Knox No. 03 CA 29, 2004-Ohio-191, ¶ 23, citing *Grenga* v. *Smith*, Trumbull App. No.2001–T–0040, 2002-Ohio-1179, *3. A defendant must "show that a fair and impartial trial cannot be had in a county in which a suit is pending." *Grenga* at 4.

Civ.R. 3(C) states in relevant part that

> [p]roper venue lies in any one or more of the following counties:
>
> (1) The county in which the defendant resides;
>
> (2) The county in which the defendant has his or her principal place of business;
>
> (3) A county in which the defendant conducted activity that gave rise to the claim for relief;
>
> (4) A county in which a public officer maintains his or her principal office if suit is brought against the officer in the officer's official capacity;
>
> (5) A county in which the property, or any part of the property, is situated if the

subject of the action is real property or tangible personal property;

(6) The county in which all or part of the claim for relief arose; or, if the claim for relief arose upon a river, other watercourse, or a road, that is the boundary of the state, or of two or more counties, in any county bordering on the river, watercourse, or road, and opposite to the place where the claim for relief arose.

When more than one county is a proper venue, "the plaintiff is not restricted to one specific county under Civ.R. 3([C][5])(1) through (9) but may choose the county in which he prefers to commence the action." *Clermont Cnty. Adamh Boards* v. *Hogan*, 12th Dist. Clermont No. CA94-09-074, 1995 WL 631641, *4. "Whether venue is proper in other counties is irrelevant as plaintiff has the choice to choose between the counties innumerate in Civ.R. 3([C])." *Lorenz Equipment Co.* v. *Ultra Builders, Inc.*, 10th Dist. Franklin No. 92AP-1445, 1993 WL 51095, *2. For the Defendants to prevail on their motion to transfer venue, they must prove that Delaware County is not a proper venue—not that Franklin is also a proper venue.

First, the City of Columbus resides in Delaware County, as well as Franklin County and Fairfield County, under Civ.R. 3(C)(1). The City does not dispute the fact that a portion of the City—and, by extension, its ordinances—extend into Delaware County. Instead, the Defendants—with no support—claim that "the City does not in fact reside in any county." Defs.' MTD Am. Compl. at 18. At the same time, they admit that venue should be where the seat of government for "the City of Columbus—Columbus City Hall—is situated," in Franklin County. *Id.* at 18, 22. The City cannot both reside nowhere and be situated somewhere. If the City is "situated" somewhere, then it is subject to venue in that location. It is indisputable that the City of Columbus is "situated"

[5] The 2018 amendments to Civ.R. 3 added a new Civ.R. 3(B) and moved former Civ.R. 3(B) to Civ.R. 3(C). The change did not affect the substance of Civ.R. 3 as it relates to this matter and Plaintiffs refer to the current section for continuity.

in three counties. Rule 3(C)(1) does not limit venue to only where the City is seated, but anywhere the City is "situated" or, in other words, resides. Indeed, the City's own website shows that it is permanently "situated" in Delaware County. *Corporate Boundary*, The City of Columbus, https://opendata.columbus.gov/datasets/41e148328e3c4c59bbc7be880c0a6737/explore?location =40.094719%2C-82.945630%2C11.98 (last visited Feb. 28, 2023).

Defendants' reliance on precedent interpreting private corporations is inapplicable. The City is a municipality created by a charter with distinct boundary lines, which it has expanded over the years by annexing portions of Delaware County. *See* Charter of the City of Columbus Sections 1 and 2. It is not a mythical entity—it is a real entity "situated" in certain locations but not others. While it is not a person, it is still a legal entity that exists in the real world, not just in some abstract location. Indeed, it collects taxes from Delaware County businesses, enforces the law there, has council members representing the area, affirmatively annexed the area, and knowingly subjected itself to the jurisdiction of the Delaware County courts. Thus, the City of Columbus resides in Delaware County under Civ.R. 3(C)(1).

Second, Delaware County is the proper venue for this action under Civ.R. 3(C)(3) because Defendants' actions giving rise to Plaintiffs' claim for relief are occurring in Delaware County. Indeed, it is beyond dispute that the Defendants' conduct of restricting firearms and enforcing the Ordinance and the New Ordinance is activity giving rise to the claim for relief in Delaware County.

In *Allin* v. *Hartzell Propeller, Inc.*, "Allin commenced an action in Geauga County, alleging that Hartzell had committed an unfair or deceptive act or practice in violation of" the Ohio consumer protection laws in Geauga County. The "act" was defendant Harzell's mailing of "advertising materials promoting its [airplane] propeller blade upgrade program that failed to disclose that a propeller's blades could be damaged in that process * * * ." *Allin* v. *Hartzell*

Propeller, Inc., 2nd Dist. Miami No. CIV.A. 02CA57, 2003-Ohio-2827, ¶ 8. Hartzell mailed the materials from another county to Allin's Geauga County residence. The court held that Hartzell thereby "conducted the activities which gave rise to Allin's claim for relief in Geauga County, and venue properly lies there [under Civ. R. 3(c)(3)]." *Id.* at ¶ 55.

Similarly, Defendants' conduct of restricting ownership and storage of firearms in Delaware County and threatening enforcement of its firearm regulations in Delaware County is "activity giv[ing] rise to the claim for relief." Plaintiff John Doe 5 possesses his firearms and 30-round magazines in his house and is subject to Defendants' threatened enforcement at that location. Further, all Plaintiffs intend to possess their 30-round magazines in the City of Columbus, including outside of their homes. Plaintiffs are as much prevented from possessing their 30-round magazines in Delaware County as they are in Franklin and Fairfield Counties. Thus, Defendants' activities of restricting firearms and enforcing the magazine and the safe storage provisions occur in Delaware County, and venue is proper under Civ.R. 3(C)(3).

Third, under Civ.R. 3(C)(5), Delaware County is also where the subject of the action—firearms and firearm magazines—are located. In *Allin*, the Second District also found that Geauga County was a proper venue under Civ.R. 3(C)(5) because, even though Allin was challenging the advertisement as a consumer protection violation, "[p]resumably, the propeller is in Geauga County, in which event venue also properly lies there because the tangible personal property which is the subject of the action is situated there." *Allin* at ¶ 55.

Similarly, Delaware County is the proper venue for this action under Civ.R. 3(C)(5) because part of the tangible personal property subject to regulation and confiscation is "situated" in Delaware County, specifically John Doe 5's 30-round magazines and his stored firearms. Defendants have specifically targeted John Doe 5's 30-round magazines located in Delaware

County by telling him that he must remove them from the City, sell them outside of the City, turn them over to the City, or face prosecution for possessing them in Delaware County. *See* the New Ordinance, Am. Compl. Ex. H. Further, John Doe 5's firearms—which are subject to the safe storage provision—are stored in his house in Delaware County. Thus, Delaware County is a proper venue under Civ.R. 3(C)(5).

Fourth, Delaware County is the proper venue for this action under Civ.R. 3(C)(6) because part of Plaintiffs' claims for relief arose in Delaware County. The restrictions on John Doe 5's constitutional and statutory rights arise, in particular, where he resides—in Delaware County. Specifically, his rights under Article I, Section 4 of the Ohio Constitutions and R.C. 9.68 to possess his 30-round magazines within his home, and store his firearms as he sees fit, arise where he resides—in Delaware County. The City's ordinance is unconstitutional and infringes on Plaintiffs' rights—as much in Delaware County as it does in Fairfield or Franklin County. Thus, at least part of Plaintiffs' claim for relief arose in Delaware County. *See* Order and Entry Regarding Defs.' Mot. to Dismiss at 7, *State* v. *City of Columbus*, Fairfield C.P. 2022-cv-00657 (Jan. 5, 2023).

The Defendants' enforcement of the law in Delaware County will also affect a major Columbus taxpayer—Cabela's. *See Cabela's Columbus, OH*, Cabela's, https://stores.cabelas.com/us/oh/columbus/1650-gemini-pl.html (last visited Feb. 28, 2023); *Magpul PMAG 30 AR/M4 Gen M2 MOE Magazine – Black*, Cabela's, https://www.cabelas.com/shop/en/magpul-pmag-30-ar-m4-gen-m2-moe-magazine (last visited Feb. 28, 2023) ("We cannot ship gun magazines with a capacity of * * * 30 rounds or larger in Columbus, OH."). Even though Cabela's is not a plaintiff herein, it is patently clear that the magazine ban will greatly affect entities located in Delaware county. The restriction on retailers also affects Plaintiffs ability to lawfully purchase 30-round magazines, or firearms sold with 30-

round magazines, at Cabela's. Thus, the restriction is not merely affecting non-plaintiff entities in Delaware, it is affecting Plaintiffs' ability to interact in a lawful fashion with those entities.

"Unless a defendant can show that he cannot get a fair trial in the venue selected by the plaintiff, a plaintiff's choice of forum must stand as long as the forum he has selected is proper under Civ. R. 3." *Shugarts* v. *Ernst Enterprises, Inc.*, 2nd Dist. Montgomery No. 10395, 1987 WL 17108, *2. Defendants have made no showing that this court is unable to provide them with a fair trial. Nor have the Defendants shown that the case must be transferred. The Defendants cite *Fowler* v. *Ohio Dept. of Pub. Safety* for the notion that this case must be transferred to Franklin County. Mot. to Dismiss at 18. First, in *Fowler*, the common pleas court noted that the collection and disbursing of the unconstitutional fees occurred in Franklin. Order at 2, *Fowler* v. *Ohio Dept. of Publ Safety*, Ottawa C.P. No 16CV009 (Apr. 13, 2016). Here, however, the activity that gave rise to the Plaintiffs' claim for relief is not a one-off fee collection—it is the continued violation of Plaintiffs' rights *anywhere* in the City. Second, the *Fowler* court only transferred venue to Franklin because venue was not proper in the Ottawa County Common Pleas Court—not because it was more proper in Franklin. *Id.* Thus, *Fowler* only supports the notion that venue should be transferred when the plaintiff has failed to establish a proper venue. Because Plaintiffs here have established that venue is proper in Delaware, *Fowler* is inapplicable.

Because this court is a proper venue, and Defendants have made no showing otherwise, the court should deny the Defendants' motion to transfer venue.

CONCLUSION

Because the Ohio Supreme Court has allowed pseudonymous filings, because Defendants' claims are improper and waived, and because the jurisdictional-priority rule does not apply, this court has subject matter jurisdiction to hear this case. Further, because this court is a proper venue, and Defendants have not shown otherwise, this court should retain this case. For all the foregoing reasons, Defendants' Motion to Dismiss Amended Complaint or, in the Alternative, to Transfer Venue should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This will certify that a true and accurate copy of the foregoing Memorandum Contra has been served by operation of this Court's electronic filing system this 6th day of April 2023.

/s/ David C. Tryon
David C. Tryon