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

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO TRANSFER VENUE

Introduction

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

The Defendants seek to dismiss or transfer the case based on the jurisdictional-priority rule. That rule does not apply here. The Plaintiffs were not parties to the

cases the Defendants referenced, which are in Franklin and Fairfield Counties. 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 won't work.

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 Ordinance. These facts establish venue in Delaware County.

As further discussed below, Defendants' Motion to Dismiss 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). 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 jurisdiction to hear claims brought by pseudonym plaintiffs because the Ohio Supreme Court has sanctioned using pseudonyms.

Defendants claim that this court does not have jurisdiction because Plaintiffs filed the complaint pseudonymously. This assertion is wrong.

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. Contrary to Defendants' claim that there has only been one Ohio case discussing the use of pseudonyms by plaintiffs, "[t]he 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*—indicated that a plaintiff filing a complaint before seeking leave from the court to do so deprives the court of 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), 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." *Id.* (emphasis added).

The argument that a court must grant permission to file pseudonymously to have subject matter jurisdiction is illogical. As Defendants admit, this court has "general jurisdiction of the subject matter of this dispute." Mot. to Dismiss 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 made clear that in certain circumstances, pseudonymous filings are permissible. Thus, a court's subject matter jurisdiction exists regardless of the revelation of the plaintiffs' names.

Because the Ohio Supreme Court has sanctioned pseudonymous filings, and no state court nor the General Assembly has limited the common pleas courts' jurisdiction in the matter, this court has jurisdiction to hear the Plaintiffs' pseudonymously filed claims.

III. The jurisdictional-priority rule is inapplicable to this case because no court has heard the whole issue of Plaintiffs' claims, and Plaintiffs were not parties to the previous cases.

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), syllabus. 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.

Plaintiffs were 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 County or Fairfield County cases, and the Defendants' own arguments reject the idea that Plaintiffs are substantially the same as any party in those cases.

The Plaintiffs were not parties to either the Franklin or Fairfield County cases. This simple fact is dispositive. In Franklin, the City of Columbus filed suit against the State, claiming that a state law was unconstitutional. *City of Columbus* v. *State*, Franklin C.P. 2019-cv-2281. 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. In Fairfield, the State filed suit against Columbus for passing its firearm restriction ordinance in violation of state law. Compl. *State* v. *City of Columbus*, Fairfield C.P. 2022-cv-00657 (Dec. 14, 2022). Again, the John and Jane Doe Plaintiffs were not a party in that action.

Despite the obvious, Defendants attempt to cure the gap in their argument with a glib suggestion that John and Jane Doe Plaintiffs are somehow substantially the same as the parties in those cases. They are not.

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

In the Franklin County case, the City of Columbus—a government entity—filed suit against the State—another government entity—claiming a state law violated the constitutional rights *of the City of Columbus*. Oddly the City of Columbus claimed it has a right to free speech, and the state statute violated that right. The Defendants do not claim that the Plaintiffs are part of 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 of Columbus regarded the State as a sovereign, unable to bring a cause of action on behalf of the residents of Ohio. Here, the Defendants argue 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.

In that case, 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 Defendants, which include the City of Columbus, do not regard harm to Plaintiffs the same as harm to the State.

Finally, the defendants in that case 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 Defendants argued in that case, it is a suit between the State entity and the city entity. These government entities are separate and apart from the people. *See* Mot. to Dismiss at 12 ("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 the Franklin County case nor the Fairfield County case has claimed jurisdiction over the whole issue of the Plaintiffs' claims.

Even if the parties were the same, no court has claimed jurisdiction over the whole issue of Plaintiffs' claims. 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."

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).

The John and Jane Doe Plaintiffs are challenging the Ordinance based on three causes of action. The Ordinance is preempted by R.C. 9.68; it violates Article I, Section 4 of the Ohio Constitution; and it is unconstitutionally void for vagueness. No other court has exercised jurisdiction over the whole issue of claims.

The Franklin County case does not challenge or even reference the Ordinance. Indeed, it could not do so because that case was filed three years before the

Ordinance's enactment. Compl. at 5. As such, the conflict between R.C. 9.68 and the Ordinance is not at issue in the Franklin case. Further, the judgment in the Franklin County case is stayed, and the entire case is on appeal. Defendants have not articulated how this court's actions could "affect or interfere with the resolution of the issues before" the Franklin County court.

To the extent that the Fairfield County case does challenge the Ordinance, the case involves only a challenge based on Article I, Section 4 of the Ohio Constitution. The court dismissed a R.C. 9.68 preemption claim, but not on the merits. The State of Ohio has appealed that case. The State of Ohio did not bring a void for vagueness claim. Again, the 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. The Defendants' threat of destroying jurisdiction by impleading the State is without merit.

The Defendants then 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. Mot. to Dismiss at 10. Whether or not the Defendants *could* somehow bring in the State via interpleader or a cross-claim is not before the court. However, the Defendants have claimed that this court lacks subject matter jurisdiction because the 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, especially when the Defendants have

already denounced the very thing they say they might do.

The City of Columbus argued in the Fairfield case, and the Defendants in their motion to dismiss before this court, that the jurisdictional-priority rule applies to any challenge between the City of Columbus and the State regarding the constitutionality of R.C. 9.68. *See* Mot. to Dismiss at 7. Thus, applying the jurisdictional priority rule to this case, if the Defendants file some sort of motion trying to assert a claim against the State to attack the validity of R.C. 9.68, then under the Defendants' own theory the court would have to deny the motion or dismiss the claim because the City of Columbus has already sued the State on that very claim in the Franklin County case. The Fairfield County court dismissed the State's claim against the City of Columbus on R.C. 9.68 on those very grounds (but did not dismiss the other claim in that case). *See* Order and Entry Regarding Defs.' Mot. to Dismiss at 6, *State* v. *City of Columbus*, Fairfield C.P. 2022-cv-00657 (Jan. 5, 2023).

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 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 the context of the commonly known rules of precedent and the Ohio Supreme Court's rules, it is obvious that just because another court has considered or is considering a similar issue does not require the court to dismiss or transfer the case.

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

The Defendants have failed to satisfy their burden to show 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(B)(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(B)." *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 Defendants do not dispute the fact that a portion of the City of Columbus—and, by extension, its ordinances—extend into Delaware County. Mot. to Dismiss at 17. Instead, the Defendants—with no support—claim that "the City of Columbus does not in fact 'reside' anywhere." *Id.* 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.* It cannot both reside nowhere and be situated somewhere. If the City of Columbus is

"situated" somewhere, then it is subject to venue in that location. It is indisputable that the City of Columbus is "situated" in three counties. Rule 3(C)(1) does not limit venue to only where a city is seated but anywhere that city is "situated" or, in other words, resides. Indeed, the City of Columbus's own map 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). The City of Columbus is a municipality that was created by a charter with distinct boundary lines, which it has expanded over the years to include portions of Delaware county. *See* Charter of the City of Columbus Sections 1 and 2. It is a real legal entity and thus situated in certain locations but not others. 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. Indeed, the Fairfield County court rejected the City of Columbus's same argument that venue was only proper in Franklin County.

Second, Delaware County is a proper venue for this action under Civ.R. 3(C)(3) and (6) because Defendants' actions giving rise to Plaintiffs' claim for relief and forming the basis for Plaintiffs' Complaint are occurring in Delaware County. Contrary to Defendants' claims, Plaintiffs have not pled that their rights are being violated only in their homes or that they have all removed their 30-round magazines from the City of Columbus. *E.g.*, Compl. at ¶ 11 and 17. Instead, Plaintiffs make several references to their right—and desire—to possess their 30-round magazines

outside of their homes and in different locations within city limits. *E.g.*, Compl. at ¶ 11 ((Emphasis added.) "The Ordinance's ban on so called 'large-capacity magazines,' places a substantial burden on Plaintiffs' ability to defend themselves, *not only in their homes located within the City of Columbus, but also while in the City of Columbus for any other lawful purpose.*"). As such, Plaintiffs are as much prevented from possessing their 30-round magazines in Delaware County as they are in Franklin County.

Plainly, the Defendants' enforcement of the Ordinance is "activity giv[ing] rise to the claim for relief" in Delaware County. Civ.R. 3(C)(3). Delaware County is also where the subject of the action—firearms magazines—are located. Civ.R. 3(C)(5). And it is also where "part of the claim for relief" arises. Civ.R. 3(C)(6). Specifically, The City of Columbus will enforce the law in Delaware County at the Cabela's sporting goods store located within its limits in Delaware County. That Cabela's location pays significant taxes to the City of Columbus and before the Ordinance, sold magazines with a capacity greater than 30 rounds. *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."). The City of Columbus's enforcement prevents Plaintiffs from lawfully purchasing 30 round magazines from Cabelas. The 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).

"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 met their burden to show that the case must be transferred. Contrary to Defendants' claim, *Fowler* v. *Ohio Dept. of Pub. Safety* is totally unlike this case. Mot. to Dismiss at 18. In *Fowler*, the common pleas court could not point to anything that happened in Ottawa county. Rather, it noted that all activities relating to the collection and disbursing of the allegedly unconstitutional fees occurred in Franklin County. Order at 2, *Fowler* v. *Ohio Dept. of Publ Safety*, Ottawa C.P. No 16CV009 (Apr. 13, 2016). Here, however, the activities that give rise to the Plaintiffs' claims for relief are not a collection of fees, but the continued violation of Plaintiffs' rights *anywhere* in the city, including the threatened arrest and prosecution of anyone present in Columbus, Delaware County who is caught with a prohibited item. Further, in *Fowler*, the Ohio Dept. of Public Safety had no presence of any kind in Ottawa County. Here the City of Columbus has a presence—and is situated—in Delaware County. *Fowler* is simply not relevant here.

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 sanctioned pseudonymous filings and 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 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 Plaintiffs' Opposition To Defendants' Motion To Dismiss Or, In The Alternative, To Transfer Venue has been served by operation of this Court's electronic filing system this 7th day of March 2023.

/s/ David C. Tryon
David C. Tryon