IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

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

REPLY OF PLAINTIFFS TO DEFENDANTS' MEMORANDUM CONTRA TO RENEWED MOTION FILED MARCH 17, 2023.

In response to the Defendants' Memorandum Contra to Plaintiffs' Renewed Motion for Temporary Restraining Order and Preliminary Injunction ("Defs.' Memo Contra Renewed Mot.") filed March 31, 2023, Plaintiffs submit this memorandum.

I. This case is not barred by the jurisdictional-priority rule.

Defendants claim that this case is barred by the jurisdictional-priority rule. It is not. Plaintiffs have responded to this argument in their Memorandum Contra of Plaintiffs to Defendants' Motion to Dismiss Amended Complaint or, in The Alternative, to Transfer Venue Filed March 24, 2023, filed concurrently herewith and incorporated hereat by reference. Defendants have additionally argued in the Defs.' Memo Contra Renewed Mot. that Plaintiffs' counsel is engaging in forum shopping. In fact, Plaintiffs were entirely within their rights to file this case wherever venue is proper, and the reason for this venue selection was, as counsel told the reporter, "because it was an appropriate county for this type of litigation."[1]

II. Plaintiffs have standing to challenge the Ordinance and new Ordinance.

Plaintiffs have standing to challenge both the magazine ban and the firearms storage

[1] Defendants quote an online article as follows: After the State lost on these issues elsewhere, Plaintiffs engaged in pure forum shopping by coming to this Court. They do not even dispute this when asked by the press. According to

provisions enacted by the Ordinance and the New Ordinance. Plaintiffs have alleged that they have "such a personal stake in the outcome of the controversy that they are entitled to have a court hear their case." *Ohioans for Concealed Carry, Inc.* v. *Columbus*, 164 Ohio St.3d 291, 2020-Ohio-6724, 172 N.E.3d 935, ¶ 21 (hereinafter "*Concealed Carry*"). It appears that Defendants attack only Plaintiffs' standing to challenge the firearms storage regulations (Columbus City Code 2323.191). Plaintiffs John Does 1–5 and Jane Doe have met the standing requirement for this challenge—all allege that they possess firearms within the City of Columbus. *See* Am. Compl. Ex. B–G; Am. Compl. at ¶ 25–36. Their possession of firearms within the city makes them subject to Columbus City Code 2323.191. As such, Plaintiffs have alleged that they have a personal stake in the outcome of the controversy regarding the firearms storage provision.

Defendants reliance on *Concealed Carry* is misguided. In *Concealed Carry*, Ohioans for Concealed Carry, Inc. challenged a Columbus ordinance based on organizational standing. *Columbus* at ¶ 9. The organization argued "that they do not need to show that they have actually been injured or that they have suffered any particularized harm." *Id.* at ¶ 31. Here, however, Plaintiffs Amended Complaint alleges each of them is injured and has suffered particularized harm. In *Columbus*, the Ohio Supreme Court distinguished organizational standing from an individual filing suit on his own behalf. *See Id.* at ¶ 7–9, 29. Any reliance on *Concealed Carry* organizational

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the Columbus Dispatch, "[Counsel for Plaintiffs here] said the suit was filed in Delaware County, a more conservative county than heavily Democratic Franklin County, because it was the appropriate county for this type of legislation. Asked to expand on that, [Plaintiffs' Counsel] said, 'I'd like to leave it at that.' " Ferenchik, *Council: Owners of large gun magazines in Columbus have until July 1 to sell or move them*, The Columbus Dispatch (Feb. 28, 2023), available at https://www.dispatch.com/story/news/local/2023/02/28/owners-of-large-gun-magazines-in-columbus-have-until-july-to-dump-them/69950080007/ (accessed Mar. 27, 2023). Defs.' Memo Contra Renewed Mot. at 7.

However, Plaintiffs' undesigned counsel's actual statement to the reporter was that the case was brought in Delaware county "because it was an appropriate county for this type of legislation" and "I'd like to leave it at that." The remainder of the language in the article about Delaware being a "more conservative county" was added by the reporter.

standing discussion is misplaced.

III. Plaintiffs are substantially likely to succeed on the merits.

A. The City of Columbus' ordinances are invalid because they are preempted by state law.

Defendants do not attempt to counter the Plaintiffs' likelihood of success on the merits of their R.C. 9.68 claim.[2] Defendants failure to address R.C. 9.68 and the authority cited below show that Plaintiffs are substantially likely to succeed on this claim.

Under Ohio's constitutional system of limited home rule, municipalities may exercise police powers within their limits to the extent that such regulations do not conflict with general laws. Ohio Const., Sec. 3, Art. XVIII; *Cleveland* at ¶ 10. Here, the regulations enacted by the Ordinance and the New Ordinance directly conflict with R.C. 9.68[3]—a statute that the Ohio Supreme Court has repeatedly affirmed as constitutional. As Defendants have well noted, common pleas courts "are bound by the doctrine of stare decisis to apply Ohio Supreme Court's precedent." Defs.' Memo Contra Renewed Mot. at 9.

During the preliminary injunction hearing, Defendants' witness, John Gripshover, provided examples of firearm laws of the City of Columbus. Some pass muster under R.C. 9.68 and some do not.

First, Mr. Gripshover testified that "the City passed a statute [sic] a number of years ago that mirrors basically the federal government's disability." Tr. at 50. That ordinance is not preempted by R.C. 9.68 because that law preempts only municipal restrictions that are greater than

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[2] *See Ohioans for Concealed Carry, Inc.* v. *Clyde,* 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967; *Cleveland* v. *State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370.

[3] "Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, including by any ordinance, rule, regulation, resolution, practice, or other action or any threat of citation, prosecution, or other legal process, may own, possess, purchase, acquire, transport, store * * * or keep any firearm, part of a firearm, [and] *its components* * * * . Any such further license, permission, restriction, delay, or process interferes with the fundamental individual right described in this division * * * and the state by this section preempts, supersedes, and declares null and void any such further license, permission, restriction, delay, or process." (Emphasis added.) R.C. 9.68.

those "specifically provided [for] by the United States Constitution, Ohio Constitution, state law, or federal law * * *." R.C. 9.68(A). Since that "statute" "mirrors basically the federal government's disability," Tr. at 50, R.C. 9.68 does not preempt that "statute."

Conversely, the regulations enacted by the Ordinance and the New Ordinance banning "large-capacity" magazines do not fit into any of R.C. 9.68's exemptions and, in fact, impose restrictions that the General Assembly has expressly rejected. Mr. Gripshover confirmed that although the State at one time regulated "large capacity magazines" (most recently magazines holding 31 or more rounds), "it no longer does." Tr. at 41. Mr. Gripshover's testimony simply confirms that R.C. 9.68 preempts the magazine ban enacted by the Ordinance and the New Ordinance. Further, Defendants' memorandum contra confirms that Defendants believe that the magazine ban goes further than what is allowed by state and federal law. Defs.' Memo Contra Renewed Mot. at 23–25 ("While there was once there is no longer a 'standalone charge under state law' for the possession of a large capacity magazine * * * ") ("Simply put, Columbus's ordinances fill gaps in existing Ohio law") ("[I]t is not uncommon for municipalities to have ordinances that differ from state law."). Because the General Assembly made a policy decision in R.C. 9.68 to remove any such restrictions, the City of Columbus cannot ban what the State "no longer does."

Thus, Plaintiffs are substantially likely to succeed on their R.C. 9.68 claims.

B. *Arnold*'s recognition that the right to bear arms in Ohio is a fundamental right entitles it to at least as much protection as that right has under the Second Amendment.

Defendants' presentation at the preliminary injunction hearing further demonstrates that the ordinances' magazine bans do not pass constitutional muster.

First, Defendants have previously argued that there is a presumption of constitutionality for their ordinances. Defs.' Post-Hearing Brief at 9. However, that presumption should not apply here. Any presumption of constitutionality only applies "when a statute, challenged as

unconstitutional, *does not involve fundamental rights* or a suspect classification." (Emphasis added.) *State* v. *Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 100 (Kennedy, J., dissenting) (citations omitted). A "basic problem with the presumption of constitutionality is that the presumption itself rests on another presumption: 'that the Legislature acted with due respect to the Constitution and enacted the law in the belief that it was within legislative power.'" *Ohio Grocers Assn.* v. *Levin*, 123 Ohio St.3d 303, 2009-Ohio-4872, 916 N.E.2d 446, ¶ 71 (Pfeifer, J., dissenting), quoting *State ex rel. Weinberger* v. *Miller*, 87 Ohio St. 12, 52, 99 N.E. 1078 (1912) (Davis, C.J., dissenting). The presumption tips the scales of justice in favor of the government, and "it is antithetical to the most fundamental of ideals: that our constitutions are intended primarily not to shelter government power, but to protect individual liberty." *State* v. *Arevalo*, 249 Ariz. 370, 378, 470 P.3d 644 (2020) (Bolick, J., concurring).

Further, since the 1993 *Arnold* test, constitutional law has developed significantly in ways that affect this case. As already briefed, since then the law has developed through *Heller*, *McDonald*, and *Bruen*. *D.C.* v. *Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008); *McDonald* v. *Chicago*, 561 U.S. 742, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010); *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 142 S.Ct. 2111 (2022). Defendants have insisted that *Arnold* only requires a reasonableness threshold for a gun regulation to meet constitutional muster. Tr. at 63. But the Ohio Supreme Court has effectively abrogated the *Arnold* standard of review for laws impinging on Ohio's right to bear arms.

There can be no doubt that Article I, Section 4 guarantees a fundamental right. *Arnold* v. *Cleveland*, 67 Ohio St. 3d 35, 46, 616 N.E.2d 163 (1993). In a series of post-Arnold cases, the Ohio Supreme Court has recognized that "[w]hen legislation infringes upon *a fundamental constitutional right* or the rights of a suspect class, strict scrutiny applies." (Emphasis added.) *State*

v. *O'Malley*, 2022-Ohio-3207, ¶ 22, citing *Arbino* v. *Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 64. See also *Klein* v. *Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, ¶ 20 (O'Connor J. dissenting) (Rights that affect the fundamental right to bear arms "should be subjected to intermediate scrutiny."). Only when "neither a fundamental right nor a suspect class is implicated, [does the court] apply a rational-basis test." *O'Malley* at ¶ 22.

While these cases do not explicitly overrule *Arnold*, they certainly abrogate *Arnold*'s reasonableness test in favor of a strict scrutiny test. And while *O'Malley* was an equal protection claim, it applied strict scrutiny to "legislation infring[ing] upon a fundamental constitutional right." *Id.* Arnold itself recognized that once the U.S. Supreme Court has integrated a right to the states, the standard for protection under the Ohio Constitution "may not deny individuals or groups the minimum level of protections mandated by the federal Constitution." *Arnold* at 42.

That federally mandated protection is explained in *Bruen*, which is based on an analysis of the history of firearms regulation. The provisions enacted by the Ordinance and the New Ordinance do not come close to meeting the *Bruen* test. See Pls.' Renewed Mot. for TRO & Prelim. Inj. at 15–17 ("Pls.' Renewed Mot."). Even before *Bruen*, the Ohio Supreme Court, guided by *Heller*, was moving in that same direction—rejecting anything like the reasonableness approach suggested by Defendants:

> A city, for example, might decide to pass legislation banning handguns. In support, it might proffer a wealth of statistics and sociological studies to show that the city's handgun ban is absolutely necessary to prevent gun violence. Confronting such a claim, a court need not sift through this evidence and ask whether more narrowly tailored ways would achieve the compelling governmental interest of reducing gun violence. Such an inquiry is unnecessary because the Second Amendment has taken

the question off the table.

State v. *Weber*, 163 Ohio St. 3d 125, 2020-Ohio-6832, 168 N.E.3d 468, 473, ¶ 69 (DeWine, J., concurring in the judgment).

The *Bruen* Court created a burden shifting test, holding that "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The *government* must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." (Emphasis added.) *Bruen*, 142 S.Ct. at 2190–130. There is little doubt that a firearm using a magazine as a feeding device is effectively unusable without the magazine. Thus, a magazine is an essential part of such firearm and therefore is covered by the Second Amendment—and equally so Article I, Section 4 of the Ohio Constitution. Plaintiffs' March 17, 2023, memorandum presents the historical information that 30-round magazines have been in civilian usage for about 60 years. Pls.' Renewed Mot. at 6–7. The Defendants' witness affirmed that 30-round magazines have been in civilian usage for a "long time," Tr. at 30, and that "there are very valid reasons why someone might want to have a high capacity magazine," Tr. at 25. While he recognized that large capacity magazines—meaning 31 rounds or more, Tr. at 46—were previously regulated by Ohio, he was mistaken in saying that Ohio had banned them. Tr. at 23–24, 61. Rather, Ohio law restricted "dangerous ordinance," which included certain firearms capable of accepting magazines which held a specified number of rounds. R.C. 2923.11(E) (2013). But the law did not ban either those magazines or firearms; it simply required a license or permit to possess the firearm. R.C. 2923.17(C)(7) (2011). See also Pls.' Renewed Mot. at 16–17.

Further, the Ordinance does not come close to satisfying the strict scrutiny test that the Ohio Supreme Court now applies to laws impinging on fundamental constitutional rights. "Under

strict scrutiny, the statute is constitutional if it furthers a compelling governmental interest and the [government's] chosen means are narrowly tailored to advance that interest." *Weber*, 163 Ohio St. 3d 125, 2020-Ohio-6832, 168 N.E.3d 468, 473, at ¶ 17. Even if the City's purported interest in reducing gun violence is compelling, Defendants have not provided any evidence whatsoever to show how banning 30-round magazines is narrowly tailored to that end. Nor could they. The justifications contained in the Ordinance, the New Ordinance, and Defendants' witness' testimony all fail to explain how taking 30-round magazines from lawful firearms owners would reduce crime in the City of Columbus.

Under any current constitutional test that the Ohio Supreme Court would apply to this case, the provisions enacted by the Ordinance and the New Ordinance fail.

1. The Ordinance is invalid even under the abrogated *Arnold* reasonableness test.

Arnold originally invoked the following test:

> Laws or ordinances passed by virtue of the police power which limit or abrogate constitutionally guaranteed rights must not be arbitrary, discriminatory, capricious or unreasonable and must bear a real *and* substantial relation to the object sought to be obtained, namely, the health, safety, morals or general welfare of the public.

(Emphasis added.) *Arnold*, 67 Ohio St.3d at 46, 616 N.E.2d 163. Even *Klein* v. *Leis*, cited by Defendants, requires that the "goal and the means to obtain it" must be reasonable. *Klein,* 99 Ohio St.3d 537, 2003-Ohio-4779, at ¶ 15.

Importantly, "rational-basis review [] under Ohio constitutional principles * * * does not mean toothless scrutiny." *Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, at ¶ 28, citing *Mathews* v. *Lucas,* 427 U.S. 495, 510, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976). "And the rational-basis test requires that the classification must bear a rational relationship to a

legitimate government interest or that reasonable grounds must exist for drawing the distinction." *Id.*, citing *Holeton* v. *Crouse Cartage Co.,* 92 Ohio St.3d 115, 131, 748 N.E.2d 1111 (2001). The Ohio Supreme Court has insisted that the legislature's "classifications must have a reasonable basis and may not 'subject individuals to an arbitrary exercise of power.'" *Id.*, quoting *Conley* v. *Shearer,* 64 Ohio St.3d 284, 288, 595 N.E.2d 862 (1992).[4]

At the hearing, Defendants tried to present evidence that the ban of 30-round magazines is not "arbitrary, discriminatory, capricious or unreasonable" and that it "bear[s] a real and substantial relation to the object sought to be obtained, namely, the health, safety, morals or general welfare of the public." *See Arnold* at 46. The object sought in this case is the reduction in crime within the City of Columbus. Instead, the evidence—notably Mr. Gripshover's testimony—showed that the 30-round cutoff is arbitrary and has no rational relationship to the objective of reducing crime or gun violence. *See* Tr. at 15–17.

Mr. Gripshover provided his observations of "large capacity magazines" being used in crime, but then testified that when he was referring to "large capacity magazines," he meant magazines holding *31 or more* rounds of ammunition. Tr. at 46. By contrast, the Ordinance and the New Ordinance refer to 30-round magazines. Defendants provided no evidence of any rationale or reasonable basis for choosing 30 rounds as the dangerous number. And the witness confirmed that 30-round magazines have been in civilian usage for a "long time," Tr. at 30, and that "there are very valid reasons why someone might want to have a high-capacity magazine." Tr. at 25. Moreover, Defendants failed to articulate any cogent reason why 29 rounds is OK, but 30 is not.

[4] Defendants cite several cases to try to claim that the Ohio Supreme Court would endorse the subject magazine ban. See *State* v. *Nieto*, 101 ohio St. 409, 130 N.E. 663 (1920); *Mosher* v. *Dayton,* 48 Ohio St.2d 243, 358 N.E.2d 540 (1976); and *Klein* v. *Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779. But these are all pre-*Bruen* (2022), pre-*O'Malley* (2022), and pre-*Weber* (2020), and they address laws regarding concealed carry of firearms or firearms registration laws. As such, none are relevant here.

Thirty is simply an arbitrary number, untethered to any evidence.[5]

Defendants' witness raised the issue of "Glock Switches" which some people use to convert Glocks (a brand of handguns) into fully automatic firearms and surmised that those who do so might want a large-capacity magazine. Tr. at 25. But he admitted that the firearm converted into a fully automatic firearm—with a Glock Switch or otherwise—would be illegal and anyone performing such a conversion would be committing a felony, regardless of the size of the magazine. Tr. at 36. So, attempts to reach conduct that is already a felony cannot be a rational basis for such an expansive ban of magazines that the City's own witness concedes have been in common usage for a long time and that Columbus residents possess for valid reasons.

Finally, in an effort to claim that the Ohio Supreme Court had already approved magazine bans, Defendants' counsel has repeatedly asserted that *Arnold* v. *Cleveland* banned magazines. It did not; it banned firearms that accepted certain magazines.[6] *Arnold*, 67 Ohio St. 3d at 36 n.1, 616 N.E.2d 163. In any event, as the law has developed post-*Arnold*, that Cleveland gun ban—if it still existed—could not withstand constitutional scrutiny and would be barred by R.C. 9.68.

In another odd argument, Defendants (incorrectly) assert that a statute—not at issue here—"prohibits having a firearm loaded with a magazine of *any* capacity on a vessel." Defs.' Memo Contra Renewed Mot. at 15, citing R.C. 1547.69. First, that law is not at issue and may well have its own constitutional infirmities. Second, that law does not ban possession of firearms—indeed it explicitly allows concealed carry permit holders to carry loaded pistols on watercraft. R.C.

[5] Reportedly, on or about March 2, 2023, Defendant Klein stated that the City chose the number 30 because "we felt comfortable with the number 30." Lacey Crisp, *Columbus gun owners have until July 1 to get rid of high-capacity magazines*, 10WBNS (March 2, 2023), https://www.10tv.com/article/news/local/columbus-gun-owners-have-until-july-1-get-rid-of-high-capacity-magazines/530-51c6811f-60a5-4c1d-b567-f3e553da77fb. But feelings are not evidence; they are not data supporting an ordinance impinging on a fundamental constitutional right. This further confirms that "30" is nothing more than an arbitrary number.

[6] That law no longer exists.

1547.69(H)(2).

Defendants next query if the State of Ohio believes that the state's prior regulation on firearms which accept certain firearm magazines were unconstitutional. Since the State of Ohio is not a party here, Plaintiffs cannot answer for the State. Nor can the Plaintiffs address the constitutionality of a law which does not exist.

Defendants next set up a strawman that "Plaintiffs have failed to cite any legal authority supporting the proposition that a legislative body must set forth every justification for its legislation in a "'WHEREAS' clause." Defs.' Memo Contra Renewed Mot. at 16. But Plaintiffs never suggested this formalism. The standard Plaintiffs have cited for the reasonable relationship test is that it "bear[s] a real *and* substantial relation to" the stated purpose. (Emphasis added.) *Arnold* 67 Ohio St. 3d at 46, 616 N.E.2d 163. See also *Klein*, 99 Ohio St.3d 537, 2003-Ohio-4779, at ¶ 15 (the "goal and the means to obtain it" must be reasonable). Defendants have not met that standard in the WHEREAS clauses in either the Ordinance or the New Ordinance *or anywhere else*.

Finally, Defendants explain that "[t]he prohibition of a harmful act need not be postponed until it occurs." Defs.' Memo Contra Renewed Mot. at 17. That is true for as far as it goes. But possessing a 30-round magazine is not an inherently harmful act. A harmful act would be using a firearm to commit an act of violence, no matter the size of the magazine. Such an act of violence is itself a crime. However, Defendants presented no evidence or cogent arguments showing that a ban on 30-round magazines is reasonable or that it "bear[s] a real *and* substantial relation to the reduction of crime." (Emphasis added.) *Arnold* at 46. Nor could they. As such, Plaintiffs are substantially likely to prevail on their claims.

IV. Plaintiffs will suffer irreparable harm without an injunction.

Defendants have made clear their intent to enforce the code provisions enacted by the

Ordinance and the New Ordinance now and in the future. Defendants submitted Exhibit 3 at the preliminary injunction hearing, which shows that "some of the city codes at issue here are not only currently being enforced but are actually resulting in charges brought." Tr. at 54–55. The New Ordinance makes clear that starting on July 1, 2023, Defendants will enforce the magazine ban against individuals who possessed their magazines prior to December 5, 2022. Columbus residents are required to turn in, destroy, or remove from city limits their 30-round magazines prior to that date. City of Columbus Ordinance 0680-2023[7]. Hence the need for a preliminary injunction remains. This is not a "mere 'possibility of enforcement," as Defendants contend. Defs.' Memo Contra Renewed Mot. at 19. It is a threat of prosecution backed up by actual prosecution of others. Plaintiffs and other city residents are entitled to judicial protection against illegal and unconstitutional arrest and prosecution. Further, the New Ordinance did not delay the Defendants' current enforcement of the large-capacity magazine ban for those possessing their magazines after December 5 or other portions of the law—such as the storage provisions discussed above and in the Amended Complaint.

Contrary to Defendants' claims that Plaintiffs cannot challenge the ordinances because they are not at risk of prosecution, "[w]hen contesting the constitutionality of a criminal statute, 'it is not necessary that [the plaintiff] first expose himself to actual arrest or prosecution to be entitled to challenge [the] statute that he claims deters the exercise of his constitutional rights.'" *Babbitt* v. *United Farm Workers Nat. Union*, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979),

[7] City of Columbus Ordinance 0680-2023, Section 2323 (E) provides: "No person who lawfully acquired or possessed a large capacity magazine prior to December 5, 2022 shall be prosecuted for lawfully possessing a large capacity magazine in violation of section 2323.32 prior to July 1, 2023. Any person who may not lawfully possess a large-capacity magazine as of December 5, 2022, shall, prior to July 1, 2023: (1) Remove the large-capacity magazine from the City limits; or (2) Prior to July 1, 2023, sell the large-capacity magazine to a licensed firearms dealer located outside of the City limits; or (3) Surrender the large capacity magazine for destruction by reporting the possession of the large capacity magazine to the Columbus Division of Police, describing the large capacity magazine in the person's possession and where the person may be found, and voluntarily surrendering the large capacity magazine to the Division of Police."

quoting *Steffel* v. *Thompson*, 415 U.S. 452, 459, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974). Here, Plaintiffs have exposed themselves to arrest and prosecution by possessing—and intending to possess after July 1—their firearms and 30-round magazines within the City. Further,

> in the determination of the constitutionality of an ordinance or statute, a court must, of course, indulge in the absolute presumption that such ordinance or statute is in fact strictly enforced. Lack of diligence by those charged with the duty of enforcing such laws must, of course, have no bearing whatsoever on the determination of such laws' validity or nonvalidity.

Wilson v. *City of Cincinnati*, 171 Ohio St. 104, 108, 168 N.E.2d 147 (1960).

As the evidence and Defendants' statements admit, Plaintiffs will suffer irreparable harm without a preliminary injunction.

Additionally, Defendants' claim that Plaintiffs have failed to articulate why their harm could not be remedied through compensatory damages by just turning in their magazines and suing for money damages. Alternatively, Defendants claim that Plaintiffs injuries could be remedied if they simply comply with an unlawful and unconstitutional ordinances. Defs.' Memo Contra Renewed Mot. at 20–21. Both of these arguments miss the point of this lawsuit. Plaintiffs have repeatedly stated that they do not intend to comply with the unlawful and unconstitutional ordinances. Based on the facts presented in this case, compensatory damages are not adequate for a prosecution of Plaintiffs because the prosecutors would be entitled to absolute immunity. *See, e.g.*, *Willitzer* v. *McCloud*, 6 Ohio St.3d 447, 449, 453 N.E.2d 693 (1983). And irreparable harm is presumed from the nature of a constitutional deprivation. See Pls.' Renewed Mot. at 19. As such,

injunctive relief is necessary.

Thus, Plaintiffs will suffer irreparable harm without a preliminary injunction.

V. No third parties will be harmed by the granting of an injunction.

Defendants argue that third parties will be harmed if the firearms storage provision is blocked. Defendants' witness testified to the twelve incidents in 2023 with children bringing guns to school because parents left them unsecured. Defs.' Memo Contra Renewed Mot. at 23. But, existing state laws cover those types of incidents. Defendants' Exhibit 3 showed that Defendants are able to prosecute parents under existing state law who negligently store their firearms. And Defendants have no argument how third parties will be harmed by an injunction against enforcement of the magazine ban.

VI. The public has an interest in state-wide uniform firearms laws and enjoining laws that upend firearms uniformity and violate the constitution.

As the General Assembly found in passing R.C. 9.68, there is a strong public policy interest in uniform firearm laws. Defendants' ordinances have caused great confusion to firearms owners in Ohio. When the Ordinance was passed, firearms owners did not know if or when they would be subject to Columbus' restrictions. The New Ordinance did not alleviate this confusion.

Defendants denigrate the idea that the General Assembly knows what is best for the citizens of Ohio. But Defendants' ordinances

> do[] not merely disrupt the status quo in an abstract sense, but [they] displace[] 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 ¶ 20. Thus, there is an immediate impact and harm * * * to individuals in jeopardy of criminal prosecution under the newly enacted city

code provisions.

Decision, *City of Columbus* v. *State*, 10th Dist. No. 22AP-676, ¶ 18 (Jan. 24, 2023).

VII. Conclusion

Based on the forgoing, Plaintiffs are entitled to a Temporary Restraining Order and Preliminary Injunction. Further, Plaintiffs are entitled to reasonable costs, including but not limited to, attorneys' fees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This will certify that a true and accurate copy of the foregoing Reply of Plaintiffs' to Defendants' Memorandum Contra to Renewed Motion Filed March 17, 2023 has been served by operation of this court's electronic filing system this 7th day of April 2023.

/s/ David C. Tryon
David C. Tryon