IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, OHIO

JOHN DOE 1, et al.,	:	
Plaintiffs,	:	
-vs-	:	Case No. 23 CV H 02 0089
CITY OF COLUMBUS, et al.,	:	
Defendants.	:	

Judgment Entry Denying the Defendants' 4/28/23 Motion for a Stay of the 4/25/23 Preliminary Injunction

The defendants in this case – the City of Columbus, city-council president Shannon Hardin, and city attorney Zach Klein – have filed an appeal from my April 25, 2023 order granting a preliminary injunction that enjoins them from enforcing certain provisions in the Columbus City Code. The defendants now ask me to stay the enforcement of the preliminary injunction until their appeal is resolved. For the reasons below, I deny that request.

The Defendants Are Not Entitled to a Stay as a Matter of Right

Ohio Rule of Civil Procedure 62 outlines the procedure for obtaining a stay of a judgment.[1] Civil Rule 62(A) states: "In its discretion and on such conditions for the security of the adverse party as are proper, the court may, upon motion made any time

[1] The parties dispute whether my April 25, 2023 decision qualifies as a "judgment" as that term is defined in Civil Rule 54 and as the term is used in Civil Rule 62, which addresses stays of judgments. I readily conclude that my decision was a judgment and so is one that can be stayed. As Civil Rule 54(A) indicates, a judgment includes a judge's "written entry ordering . . . a form of relief," and Ohio courts have repeatedly described an injunction as a form of relief. See, e.g., *State ex rel. Gadell-Newton v. Husted*, 153 Ohio St.3d 225, 2018-Ohio-1854, 103 N.E.3d 809, ¶ 40; *State ex rel. Baryak v. Trumbull County Bd. of Elec.*, 11th Dist. No. 2019-T-0040, 2019-Ohio-4655, ¶ 12; *Heartland of Portsmouth, OH, LLC v. McHugh Fuller Law Group, PLLC*, 85 N.E.3d 191, 2017-Ohio-666, ¶ 27 (4th Dist.).

after judgment, stay the execution of that judgment or stay any proceedings to enforce the judgment[.]"

Exercising that discretion, a trial court may grant a stay after considering whether: (1) the stay applicant has demonstrated that he or she is likely to succeed on the merits; (2) the applicant will face irreparable injury absent a stay; (3) a stay will substantially injure the other parties interested in the proceeding; and (4) the public interest favors a stay. *Davis v. McGuffey*, 167 Ohio St.3d 1442, 2022-Ohio-2163, 189 N.E.3d 806, ¶ 8 (Kennedy, J., dissenting), citing *Nken v. Holder*, 556 U.S. 418, 434, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009).

If a court finds that the *Nken* factors warrant a stay, Civil Rule 62(B) provides: "When an appeal is taken the appellant may obtain a stay of execution of a judgment or any proceedings to enforce a judgment by giving an adequate supersedeas bond." But where, as here, a political subdivision files an appeal and "the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant." Civ.R. 62(C).

Starting with its decision in *State ex rel. Ocasek v. Riley*, the Supreme Court of Ohio has repeatedly found that Civil Rules 62(B) and (C) give political subdivisions the right to a stay when they request one. *Ocasek*, 54 Ohio St.2d 488, 490, 377 N.E.2d 792 (1978). See also *State ex rel. State Fire Marshal v. Curl*, 87 Ohio St.3d 568, 570–573, 722 N.E.2d 73 (2000); *State ex rel. Geauga Cty. Bd. of Commrs. v. Milligan*, 100 Ohio St.3d 366, 2003-Ohio-6608, 800 N.E.2d 361, ¶¶ 15–16, 19 (2003); *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 129 Ohio St.3d 30, 2011-Ohio-626, 950 N.E.2d 149, ¶¶ 29–30 (2011).

In essence, when the *Ocasek* rule applies and a political subdivision moves for a stay, the rule strips a trial judge of his or her discretion over whether to grant a stay. *Electronic Classroom of Tomorrow*, 129 Ohio St.3d 30 at ¶ 29 ("Civ.R. 62 patently and unambiguously imposes on the court of common pleas and its judges the duty to issue a stay without a supersedeas bond upon an appeal and request for stay by a political subdivision"); *Sogg v. Zurz*, 192 Ohio App.3d 22, 2011-Ohio-81, 947 N.E.2d 1256, ¶ 24 (10th Dist.) ("The state of Ohio is always entitled to a stay of judgment without bond while pursuing a direct appeal of a trial court's judgment").

Even though Columbus is a political subdivision and has moved for a stay, *Ocasek* does not control here. For one, the Supreme Court has never applied *Ocasek*'s automatic-stay principle in a case involving injunctive relief. See *Ocasek*, 54 Ohio St.2d at 489–490 (declaratory judgment); *Curl*, 87 Ohio St.3d at 568 (writ of mandamus); *Milligan*, 100 Ohio St.3d 366 at ¶ 1 (declaratory judgment and writ of mandamus); *Electronic Classroom of Tomorrow*, 129 Ohio St.3d 30 at ¶ 1 (civil monetary judgment). The same is true for the Fifth District. But see *Grudzinski v. Med. College of Ohio*, 6th Dist. Lucas No. L-00-1098, 2000 WL 376401 at *4 (Apr. 12, 2000) (noting that the appellate court had granted the defendant a stay of an injunction under the authority of *Ocasek*); *Hamilton v. Fairfield Twp.*, 112 Ohio App.3d 255, 273, 678 N.E.2d 599 (12th Dist.1996) (trial court did not err when it stayed a permanent injunction because *Ocasek* required that it do so where the appellant was a political subdivision).

Additionally, extending *Ocasek* to cases involving injunctive relief would depart significantly from practice under the Federal Rules. Just as Civ.R. 62(C)[2] speaks to appeals by the State of Ohio and its political subdivisions, Fed.R.Civ.P. 62(e)[3] includes a provision that addresses appeals by the United States. Yet, the automatic stay afforded to the United States by the federal rule is limited to appeals in cases involving monetary judgments. See, e.g., *In re Mgndichian*, 2003 WL 23358199, *1 (C.D. Calif. 2003) ("courts have concluded that when the United States moves for a stay of a money judgment pending appeal, it is entitled to a stay as a matter of right"); *Rhoads v. FDIC*, 2003 U.S. Dist. Lexis 18215, *12 (D. Md. 2003) ("Pursuant to Rules 62(d) and (e) of the Federal Rules of Civil Procedure, the FDIC is entitled to a stay of enforcement of the money judgment"). Consistent with that interpretation of the federal rule, the U.S. Supreme Court has sometimes granted only in part – and has sometimes even denied – stay requests sought by the federal government and its officials in cases involving nonmonetary judgments. See, e.g., *Trump v. East Bay Sanctuary Covenant*, ___ U.S. ___, 139 S.Ct. 782, 202 L.Ed.2d 510 (2018) (Mem.) (denying a stay); *Trump v. Internatl. Refugee Assistance Project*, 582 U.S. 571, 580, 137 S.Ct. 2080, 198 L.Ed.2d 643 (2017) (granting a stay in part); *Packwood v. Senate Select Committee on Ethics*, 510 U.S. 1319, 114 S.Ct. 1036, 127 L.Ed.2d 530 (Rehnquist, J., in chambers) (denying a stay).

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[2] "When an appeal is taken by this state or political subdivision, . . . and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant."

[3] "The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies."

The distinction that federal courts have drawn between, on the one hand, automatic stays with no bond requirement for the United States in cases involving monetary judgments and, on the other hand, discretionary stays with no bond requirement for the United States in cases involving injunctions or other nonmonetary relief makes sense. The U.S. Treasury has a fund to pay judgments, and that fund's existence makes the collection of any monetary judgment against the United States "expedient and convenient" if the government's appeal of such a judgment against it is unsuccessful after any automatic stay is granted. Wright et al., *Federal Practice and Procedure Civil*, Section 2906 (3d ed.). A similar rationale supports an automatic stay in favor of the State and its political subdivisions when any of them are found liable for a money judgment and wish to appeal that judgment. In the end, the judgment creditor knows that it will be paid if it prevails in any appeal, and no bond is needed to guarantee that payment.

The application of *Ocasek*'s automatic-stay principle to an order granting a preliminary injunction, though, would stray not only from federal practice but from Ohio Civil Rule 62's animating rationale. At base, the purpose of Civil Rule 62 is to preserve the status quo and ensure that a judgment does not become moot as a result of enforcement actions pending appeal. See *Monarch Constr. Co. v. Ohio School Facilities Comm.*, 2002-Ohio-2957, 771 N.E.2d 941, ¶ 10 (C.P.) (Brunner, J.); *Mahoney v. Berea*, 33 Ohio App.3d 94, 96, 514 N.E.2d 889 (8th Dist.1986) (the purpose of a supersedeas bond "is to secure the appellee's right to collect on the judgment during the pendency of the appeal").

And like a stay, a preliminary injunction is intended to preserve the status quo while a case is being heard on the merits. See *Doster v. Kendall*, 54 F.4th 398, 441 (6th

Cir. 2022) ("As a matter of historical practice, preliminary injunctions have typically sought merely to preserve the 'status quo' by stopping a defendant's threatened conduct from causing (irreparable) harm until the court has a meaningful chance to resolve the case on the merits"); *Benisek v. Lamone*, ___ U.S. ___, 138 S.Ct. 1942, 1945, 201 L.Ed.2d 398 (2018) (the purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held") (quotations omitted).

In granting the preliminary injunction several weeks ago, I acted not only to preserve the status quo that had been in place before the city's recent enactment of the firearms-related ordinances that are at issue in the case but also to prevent the possible irreparable harm that might result if the criminal penalties in those ordinances were imposed by the city before I had addressed the merits of the parties' dispute. Any automatic stay of that preliminary ruling now would run counter to those animating principles even though requests for stays and requests for injunctions are evaluated under the same standards. See *Commonwealth v. Beshear*, 981 F.3d 505, 508 (6th Cir. 2020) ("In determining whether a stay should be granted . . ., we consider the same four factors that are traditionally considered in evaluating the granting of a preliminary injunction").

In other words, the city asks me to adopt the seemingly illogical view that Ohio law guarantees that the State and its political subdivisions will always win at the preliminary-injunction stage in every trial court: Either the trial court will, on the one hand, rule against a citizen-plaintiff's request for a preliminary injunction to enjoin the government entity or, on the other hand, the trial court will – as happened last month in this case – rule against the government entity at the preliminary-injunction stage and

then be compelled to immediately stay that ruling. In short, the defendants' view of Rule 62 is "heads we win; tails you lose" every time any person or entity seeks an injunction to stop some alleged wrongdoing by the State or one of its political subdivisions.

Were the State and its political subdivisions invariably entitled to a stay of even nonmonetary judgments against them, public officials could engage in significant and harmful misconduct while the appellate process played out in some cases involving injunctive relief. For instance, R.C. 149.351 permits an individual to institute an action for injunctive relief against a public office or agency that is engaging in the unlawful destruction of public records. If a citizen secured a preliminary injunction to enjoin a particular government office or agency from destroying additional records, that public entity could, under the city's rationale, obtain an automatic stay and could continue to destroy public records until a court of appeals had resolved the merits of the government agency's appeal. For a citizen seeking the preservation of a specific public record, that extra time for government mischief could make all the difference.

This legal gamesmanship could even stymy enforcement actions brought by the Ohio Attorney General. R.C. 109.981 authorizes the Attorney General to file a civil suit for injunctive relief against a member of the workers' compensation oversight board for violations of that member's fiduciary duty to the Bureau of Workers' Compensation. The statute states, "[t]he attorney general may recover damages or be granted injunctive relief, which shall include the enjoinment of specified activities and the removal of the member from the board." Yet, because a board member would enjoy the ability to receive a stay as a matter of right under the city's reading of Civ.R. 62, that member could invariably remain on the oversight board and could continue to violate his or her

fiduciary duties while that board member appealed a trial judge's order barring the misconduct from continuing.

Ultimately, then, I find that the defendants have not shown that they are entitled to an automatic stay of the nonmonetary judgment that I granted against them last month. I not only see no binding precedent requiring that I apply *Ocasek* to a case involving injunctive relief, but I also doubt that the Supreme Court intended to empower public officials and political subdivisions to cause harm for several additional months right after a trial judge has concluded that that very harm ought to be stopped or at least averted while the merits of a legal dispute are heard by the trial court.

Having Already Analyzed the *Nken* Factors When I Analyzed the Plaintiffs' Request for a Preliminary Injunction, I Deny the Defendants' Motion for a Stay

To determine whether to grant a stay, I must look to whether: (1) the defendants are likely to succeed on the merits of their appeal; (2) the defendants will suffer irreparable harm absent a stay; (3) a stay will substantially injure the plaintiffs; and (4) the public interest favors a stay. *Davis*, 167 Ohio St.3d 1442 at ¶ 8 (Kennedy, J., dissenting), citing *Nken*, 556 U.S. at 434.

When I evaluated the plaintiffs' request for a preliminary injunction, I necessarily considered those very factors. In my April 25, 2023 decision, I explained my conclusion that the plaintiffs – and not the defendants – are likely to succeed on the merits of the parties' dispute. And, no matter how well-intentioned, the deprivation of constitutional rights constitutes irreparable harm, and it is always in the public interest to prevent that harm. See *Overstreet v. Lexington-Fayette Urban Cty. Govt.*, 305 F.3d 566, 578 (6th Cir.2002); *Déjà Vu of Nashville, Inc. v. Metro. Govt. of Nashville & Davidson Cty., Tenn.*, 274 F.3d 377, 400 (6th Cir.2001). I, therefore, find that a stay is not appropriate.

The Preliminary Injunction Applies Without Geographic Limit

The defendants also ask that I clarify the scope of the preliminary injunction by holding that it is valid only within the geographic borders of Delaware County and no further. They maintain that I must do so because, in their view, I lack the statutory authority to grant injunctive relief that can be enforced outside Delaware County.

I disagree, and I find no support for the defendants' position in Ohio's common law or in any state statutes or court rules. In fact, multiple Ohio courts have issued injunctions that are binding on the parties in areas well beyond the borders of the issuing court's geographic boundaries. See, e.g., *Stoner v. Salon Lofts, LLC*, 10th Dist. Franklin No. 11AP-838, 2012 WL 2928671, * 3 (July 19, 2012) (affirming the issuance by the Court of Common Pleas of Franklin County of a preliminary injunction that barred a former employee of a business from opening competing businesses "in nine counties in North Carolina and two counties in South Carolina"); *State ex rel. Montgomery v. Pakrats Motorcycle Club, Inc.*, 118 Ohio App.3d 458, 463, 693 N.E.2d 310 (9th Dist.1997) (affirming the issuance of a permanent injunction by the Court of Common Pleas of Wayne County enjoining the defendants from holding an event "in Wayne County or anywhere in the state of Ohio"); see also *Yocono's Restaurant, Inc. v. Yocono*, 100 Ohio App.3d 11, 23–25, 651 N.E.2d 1347 (9th Dist.1994) (discussing the geographic scope of an injunction); *Cesare v. Work*, 36 Ohio App.3d 26, 35, 520 N.E.2d 586 (9th Dist. 1987) (affirming the issuance of a "nationwide injunction" by the Court of Common Pleas of Summit County).

Were the defendants' view to prevail, numerous orders issued by trial courts in this state – including protective orders, subpoenas, domestic-violence and civil-stalking protection orders, and various others – would be of little value, for they could be

enforced only in a limited geographic area near each county courthouse. That has never been the law in Ohio.

For the reasons explained above, the defendants' motion asking me to stay or to limit the geographic reach of the April 25, 2023 preliminary injunction is denied.

David M. Gormley
Judge

The Clerk of this Court is ordered to serve a copy of this Judgment Entry upon all counsel of record through the Clerk's e-filing system, by regular mail, or by fax.