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IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
DELAWARE COUNTY, OHIO

JOHN DOE 1, ET AL. Plaintiffs - Appellees -vs- CITY OF COLUMBUS, ET AL. Defendants - Appellants	Case No. 23 CAE 04 0028 Opinion and Judgment Entry Appeal from the Delaware County Court of Common Pleas, Case No. 23 CV H 02 0089 Judgment: Affirmed Date of Judgment Entry:

BEFORE: William B. Hoffman; Craig R. Baldwin; Robert G. Montgomery, Judges

APPEARANCES: David C. Tryon, Robert D. Alt, Jay R. Carson, Alex M. Certo, The Buckeye Institute, for Plaintiffs-Appellees; Richard N. Coglianese, Matthew D. Sturtz, Aaron D. Epstein, Assistant City Attorneys, City of Columbus Department of Law, for Defendants-Appellants.

Hoffman, P.J.

{¶1} This matter is before us upon remand from the Ohio Supreme Court, which recently reversed our decision in *John Doe 1 v. City of Columbus*, Delaware App. No. 23CAV H 02 0089 (5th Dist.), and remanded the matter with instructions to consider the merits of the appeal.

{¶2} Defendants-appellants City of Columbus, et al. ("the City") appeal the April 25, 2023 Judgment Entry entered by the Delaware County Court of Common Pleas, which granted a preliminary injunction in favor of plaintiffs-appellees John Doe 1, et al.

STATEMENT OF THE FACTS AND CASE

{¶3} On December 5, 2022, the Columbus City Council ("the Council") passed Ordinance Number ("Ord. No.") 3176-2022, which amended and/or enacted several sections of the Columbus City Code to "effectuate common sense gun reform." Newly enacted Columbus City Code ("C.C.C.") § 2323.32, and related C.C.C. § 2323.321, specifically prohibit the carrying or possession of certain high capacity magazines for firearms ("large-capacity magazine prohibition"). Newly enacted C.C.C. § 2323.191 prohibits the "negligent storage of a firearm" in a location in a person's residence where the person "knows or reasonably should know a minor is able to gain access to" the firearm ("negligent- storage prohibition"). Anyone who violates Ord. No. 3176-2022 faces criminal penalties, including a mandatory jail term. C.C.C. § 2323.32.

{¶4} On February 16, 2023, Appellees John Does 1 through 4, and Jane Doe filed a complaint, challenging Ord. No. 3176-2022. Appellees asserted the large-capacity magazine and negligent-storage prohibitions violated R.C. 9.68 as well as Article 1, Section 4 of the Ohio Constitution. Appellees also challenged the large-capacity magazine prohibition as void for vagueness under the Ohio Constitution. On the same day, Appellees filed a motion for temporary restraining order and preliminary injunction. The trial court scheduled a preliminary injunction hearing for February 21, 2023.

{¶5} On February 21, 2023, the City filed a motion to dismiss or, in the alternative, to transfer venue to Franklin County. The trial court conducted the preliminary injunction hearing as previously scheduled. During the hearing, Appellees orally moved for leave to proceed pseudonymously. The trial court ordered the parties to further brief the issues by

March 7, 2023. Appellees filed a motion for leave to proceed pseudonymously on February 24, 2023.

{¶6} Shortly after Appellees filed their complaint, on February 27, 2023, the Council enacted Ord. No. 0680-2023, which amended some provisions of the large-capacity magazine prohibition. Ord. No. 0680-2023 created a mechanism for surrendering such magazines and conferred immunity from prosecution until July 1, 2023, for individuals who lawfully acquired or possessed the prohibited magazines prior to December 5, 2022.

{¶7} As per the trial court's order, on March 7, 2023, the City filed its post-hearing brief and memorandum contra Appellees' motion for a temporary restraining order and preliminary injunction, and Appellees filed their post-hearing memorandum in support of their motion for temporary restraining order and preliminary injunction. Appellees also filed a brief in opposition to the City's motion to dismiss or, in the alternative, to transfer venue. The City filed a memorandum contra Appellees' motion for leave to proceed pseudonymously on March 10, 2023.

{¶8} On March 10, 2023, Appellees filed an amended complaint, adding an additional plaintiff, John Doe 5, who averred he was a resident of the City of Columbus and Delaware County. The amended complaint challenged Ord. No. 3176-2022, as well as Ord. No. 0680-2023, and sought the same relief sought in the original complaint. The City filed a motion to dismiss the amended complaint or, in the alternative, to transfer venue on March 24, 2023. Appellees filed a memorandum contra on April 6, 2023, and the City replied on April 13, 2023.

{¶9} Appellees filed a renewed motion for temporary restraining order and preliminary injunction on March 17, 2023. The City filed a memorandum contra on March

31, 2023. Appellees filed reply on April 7, 2023. Appellees filed a supplement to their motion for leave to proceed pseudonymously on April 12, 2023. The City filed a memorandum contra on April 18, 2023, and Appellees replied on April 24, 2023.

{¶10} Via Judgment Entry filed April 25, 2023, the trial court granted Appellees' motion to proceed pseudonymously, denied the City's motions to dismiss the complaints or, in the alternative, to transfer venue, and granted Appellees' motions for preliminary injunction. The City filed a timely Notice of Appeal. Via Judgment Entry filed November 29, 2023, this Court dismissed the City's appeal for lack of a final, appealable order. The City filed a Notice of Appeal to the Ohio Supreme Court.

{¶11} On April 1, 2026, the Ohio Supreme Court reversed this Court's judgment and remanded the matter with instructions to consider the merits of the appeal. Via Judgment Entry filed May 26, 2026, this Court reopened the case. Oral arguments were held on August 4, 2026, and the case submitted to this Court for consideration. The City's appeal of the April 25, 2023 Judgment Entry is properly before us for decision.

{¶12} The City raises the following assignments of error:

> I. DID THE TRIAL COURT ERR WHEN IT ALLOWED THE FICTITIOUS PLAINTIFFS WHO REFUSED TO IDENTIFY THEMSELVES TO THE CITY OR EVEN TO THE COURT ITSELF TO INSTITUTE LEGAL PROCEEDINGS UNDER FICTITIOUS NAMES IN VIOLATION OF THE OHIO CONSTITUTION AND THE OHIO RULES OF CIVIL PROCEDURE? *SEE* JUDGMENT ENTRY (APRIL 25, 2023) AT 2-5 ("ENTRY").

II. DID THE TRIAL COURT ERR WHEN IT DETERMINED THAT IT HAD SUBJECT MATTER JURISDICTION TO HEAR A CASE CONCERNING THE SAME WHOLE ISSUE ALREADY PENDING IN OTHER COUNTIES, IN VIOLATION OF THE JURISDICTIONAL PRIORITY RULE? *SEE* ENTRY AT 13-17.

III. DID THE TRIAL COURT ERR WHEN IT DETERMINED THAT THE FICTITIOUS PLAINTIFFS WERE ENTITLED TO A PRELIMINARY INJUNCTION DESPITE THE LACK OF STANDING TO EVEN RAISE THEIR CLAIMS? *SEE* ENTRY AT 7-10.

IV. DID THE TRIAL COURT ERR WHEN IT DETERMINED THAT THE FICTITIOUS PLAINTIFFS WERE ENTITLED TO A PRELIMINARY INJUNCTION IN A STATE LAW CLAIM BY APPLYING FEDERAL CASES REVIEWING THE SECOND AMENDMENT TO THE U.S. CONSTITUTION, INCLUDING A VACATED FEDERAL APPELLATE COURT DECISION, INSTEAD OF BINDING OHIO SUPREME COURT PRECEDENT REVIEWING THE OHIO CONSTITUTION? *SEE* ENTRY AT 20-25.

V. DID THE TRIAL COURT ERR WHEN IT DETERMINED THAT THE FICTITIOUS PLAINTIFFS WERE ENTITLED TO A PRELIMINARY INJUNCTION EVEN THOUGH THEY INTRODUCED NO EVIDENCE WHATSOEVER THAT THE CITY'S ORDINANCES AT ISSUE WERE UNCONSTITUTIONAL OR ON THE REMAINING

PRELIMINARY INJUNCTION FACTORS? *SEE GENERALLY* ENTRY AT 20-25, 27-20.

I

{¶13} In its first assignment of error, the City contests the trial court's ruling allowing Appellees to proceed pseudonymously.

{¶14} Civ.R. 10(A) requires plaintiffs to provide their names and addresses in the captions of their complaints. "The rule ensures that judicial proceedings will be conducted in public, *Doe v. Bruner*, 12th Dist. Clinton No. CA2011-07-013, 2012-Ohio-761, ¶ 5, and it supports the principle that '[t]he people have a right to know who is using their courts,' *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th Cir. 1997)." *State ex rel. Cincinnati Enquirer v. Shanahan*, 2022-Ohio-448, ¶ 30.

{¶15} In *State ex rel. Cincinnati Enquirer v. Shanahan*, the Ohio Supreme Court explained:

> The public's right to know a litigant's identity derives from the United States and Ohio Constitutions and the common law. See *Doe v. Stegall*, 653 F.2d 180, 185-186 (5th Cir. 1981) (recognizing that a party's use of a pseudonym implicates the public's First Amendment rights); Ohio Constitution, Article I, Section 16 ("All courts shall be open * * *"); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000) ("Plaintiffs' use of fictitious names runs afoul of the public's common law right of access to judicial proceedings"). The public, therefore, must have a way to challenge a court order that limits

access to judicial proceedings. See *Globe Newspaper Co. v. Superior Court for Norfolk Cty.*, 457 U.S. 596, 609, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982), fn. 25. *Id.* at ¶31.

{¶16} "It is the rare exception for a litigant to be allowed to proceed anonymously." *Id.* at ¶ 36, citing *Doe v. Megless*, 654 F.3d 404, 408, (3d Cir. 2011). A court may excuse a plaintiff from identifying him/herself only when his/her "privacy interests substantially outweigh the presumption of open judicial proceedings." *Id.*, citing *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004).

{¶17} However, a court may excuse plaintiffs from identifying themselves in certain circumstances. Several considerations determine whether a plaintiff's privacy interests substantially outweigh the presumption of open judicial proceedings. "Four of the primary considerations are: (1) whether the plaintiff seeking anonymity is suing to challenge governmental activity; (2) whether prosecution of the suit will compel the plaintiff to disclose information 'of the utmost intimacy'; (3) whether the litigation compels plaintiff to disclose an intention to violate the law, thereby risking criminal prosecution; and (4) whether the plaintiff is a child." (Citations omitted.) *Doe v. Cedarville Univ.*, 2024-Ohio-100, ¶ 17 (2d Dist.). Courts have also considered other factors, such as whether "threats of retaliation have been made against the plaintiff as well as the potential prejudice of the opposing party." (Citation omitted.) *Id.*

{¶18} We review a trial court's ruling regarding a party's request to proceed pseudonymously under an abuse of discretion standard. *Id.* at ¶ 18. In order to find an abuse of discretion, we must find the trial court's decision was unreasonable, arbitrary, or

unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶19} The trial court found, because the City "evidently wishes to enforce through criminal penalties its ban on high-capacity magazines, the anonymous plaintiffs' fear of prosecution under the city's new ordinance does appear to be objectively reasonable." April 25, 2023 Judgment Entry at p. 3. The trial court added, "Any prosecution of the plaintiffs that Columbus might pursue were the plaintiffs forced to reveal their true names might not run afoul of the privilege against self-incrimination protected by the U.S. Constitution's Fifth Amendment, but the compelled disclosure of those true names now could certain[ly] undermine their liberty interests." *Id.*

{¶20} Alternatively, the trial court noted it saw "no prejudice that would flow to the city from the plaintiffs' proposed use of pseudonyms in this litigation." *Id.* at p. 4. The trial court explained:

> [The City] presumably would not alter its stance on the issues presented in this case or offer different defenses to the plaintiffs' claims if the plaintiffs' names were publicly revealed. And though I recognize that the public may very well have a legitimate interest in knowing the identities of some persons who wish to possess or carry the large-capacity magazines that the ordinance aims to regulate, the city's and the public's ability to enforce the ordinance's criminal penalties against the general public is not significantly impeded by the anonymity of the six plaintiffs in this case. Noteworthy, too, is the fact that the

city itself has, in the February, 2023 version of the ordinance, opted to forgo any prosecution under the ordinance until July 1, 2023.

Were the city to prosecute and incarcerate any named plaintiff who sought to challenge the new ordinance, that heavy-handed approach would surely chill the public's ability to raise legitimate legal questions about the ordinance's validity. Though those questions could perhaps be raised by any accused persons in the midst of any criminal proceedings against them, the prospect of prosecution alone would likely chill the legitimate interests of some Columbus residents who might feel that the new ordinance is an invalid one and who might want, in a civil proceeding such as this one, to challenge the city's ability to enforce the ordinance.

Id. at p. 4.

{¶21} The trial court granted Appellees' request to proceed pseudonymously, concluding their interest in proceeding as such outweighed the interests of the City and the public in knowing Appellees' true names. We agree with the trial court's rationale and find the trial court did not abuse its discretion in allowing Appellees' to proceed pseudonymously.

{¶22} Within this assignment of error, the City also claims the trial court lacked subject-matter jurisdiction over the action because Appellees failed to use their names and addresses in the complaint and failed to follow proper procedures to proceed pseudonymously. We disagree.

{¶23} Article IV, Section 4(B) of the Ohio Constitution provides "[t]he courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable

matters." Without question the claims asserted by Appellees are justiciable matters. Further, there is no dispute Appellees are real persons bringing these claims. Accordingly, we conclude the trial court had subject-matter jurisdiction to consider Appellees' complaint and allowing them to proceed pseudonymously.

{¶24} Based upon the foregoing, the City's first assignment of error is overruled.

II

{¶25} In its second assignment of error, the City argues the trial court lacked jurisdiction over Appellees' claims brought under Article I, Section 4 of the Ohio Constitution as well as R.C. 9.68, as those claims are barred by the jurisdictional-priority rule.

{¶26} The jurisdictional-priority rule provides, as between state courts of concurrent jurisdiction, the tribunal whose power is first invoked acquires exclusive jurisdiction to adjudicate the whole issue and settle the rights of the parties. *State ex rel. Clark v. Twinsburg*, 2022-Ohio-3089, ¶ 14, citing *State ex rel. Consortium for Economic & Community Dev. for Hough Ward 7 v. Russo*, 2017-Ohio-8133, ¶ 8. In general, the jurisdictional-priority rule applies only when the causes of action are the same in both cases. *Id.* at ¶ 15, citing *State ex rel. Shimko v. McMonagle,* 92 Ohio St.3d 426, 429 (2001). As the Ohio Supreme Court explained in *State ex rel. Dunlap v. Sarko*, 2013-Ohio-67:

> 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 (1987).

Nevertheless, we have also recognized that the jurisdictional-priority rule can apply even when the causes of action and relief requested are not exactly the same, as long as the actions present part of the same "whole issue." *State ex rel. Otten v. Henderson*, 2011-Ohio-4082, ¶ 29; *State ex rel. Sellers v. Gerken*, 72 Ohio St.3d 115, 117 (1995).

Id. at ¶ ¶ 10-11.

{¶27} "The determination of whether two cases concern the same 'whole issue' is a two-step analysis." *Davis v. Cowan Sys.*, 2004-Ohio-515, ¶ 14 (8th Dist.). "*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 in original. Citation omitted.) *Id.*

{¶28} The City contends the instant action "is actually the *third* case filed to test whether R.C. 9.68 and/or the Ohio Constitution prohibits the City from enacting its gun ordinances." Brief of Appellants at p. 10. The City explains, although the trial court determined the issues before it "were the exact same issues" as those before the Franklin County Court of Common Pleas and the Fairfield County Court of Common Pleas, the trial court erred when it "mandated that the parties be identical in all cases for the jurisdictional-priority rule to apply." *Id.* at p. 11. The City asserts the trial court's determination the rule requires identical parties in all actions is "contrary to law and the entire purpose of the jurisdictional-priority rule." Brief of Appellants at p. 11.

{¶29} The City relies on the Ohio Supreme Court's decision in *State ex rel. Racing Guild of Ohio v. Morgan*, 17 Ohio St.3d 54 (1985), in support of its assertion. We find the City's assertion is not supported by *State ex rel. Racing Guild of Ohio*.

{¶30} In *State ex rel. Racing Guild of Ohio*, Relator, the Racing Guild of Ohio, Local 304, Service Employees International. Union, AFL-CIO, CLC, sought a writ of prohibition against Respondents, the Summit County Court of Common Pleas and Judge Glen B. Morgan of that court. *Id.* at p. 55. Relator sought to prevent Judge Morgan from assuming jurisdiction in a case filed in Summit County in which Relator was a named defendant. *Id.* The action arose out of a labor dispute between Relator and intervening respondent, Northfield Park Associates ("Northfield"). *Id.*

{¶31} Relator represented parimutuel clerks who worked at Northfield Park, a horserace track located in both Cuyahoga and Summit Counties. Northfield was the owner of the park. *Id.* A collective bargaining agreement between Relator and the lessees of Northfield Park expired on December 31, 1984. *Id.* Negotiations prior to the expiration date of the collective bargaining agreement were unsuccessful, and picketing began at the track on December 31, 1984. *Id.*

{¶32} On January 8, 1985, Relator filed a complaint in the Cuyahoga County Court of Common Pleas against Northfield and others, seeking injunctive relief to prevent interference with picketing at the track. *Id.* Northfield was served on the same day at its office in Cleveland. *Id.* The next day, January 9, 1985, Northfield filed a complaint in the Summit County Court of Common Pleas against Relator and its members and officers, seeking injunctive relief to restrict or prohibit picketing at the track. Northfield also moved for a temporary restraining order. *Id.* Judge Morgan conducted a TRO hearing on the same day.

Id. Relator moved to dismiss the Summit County action on grounds the previously filed Cuyahoga County action precluded jurisdiction in Summit County. *Id.* Judge Morgan denied Relator's motion and issued a temporary restraining order. *Id.* Thereafter, Relator sought a writ of prohibition, arguing Summit County did not have jurisdiction in the action filed by Northfield. *Id.* at p. 56.

{¶33} The Ohio Supreme Court analyzed the two underlying actions under the jurisdictional-priority rule. *Id.* The Supreme Court found Summit County Court of Common Pleas and Judge Morgan did not have jurisdiction over Northfield's claims. *Id.*

{¶34} Contrary to the City's assertion, we find no language or cited caselaw in the *State ex rel. Racing Guild of Ohio* decision which stands for the proposition, or even suggests such a proposition, the jurisdictional-priority rule is applicable even when the parties in the separate actions are not the same. To repeat:

> 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.

{¶35} (Emphasis added. Citations omitted.) *Centerburg RE, L.L.C. v. Centerburg Pointe, Inc.*, 2014-Ohio-4846, ¶ 45 (5th Dist.). See also *Davis v. Cowan Sys.*, 2004-Ohio-515, ¶ 14 (8th Dist.).

{¶36} The instant action and the Franklin County and Fairfield County actions do not involve substantially the same parties. Further, the jurisdictional-priority rule ensures "the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction" to not only "adjudicate upon the whole issue," but also "to settle the rights of the parties." (Citations omitted.) *Id.* at ¶ 44. The Franklin County and Fairfield County actions would not "settle the rights of" Appellees.

{¶37} Based upon the foregoing, we find the trial court did not lack jurisdiction over Appellees' claims and properly found the jurisdictional-priority rule was not applicable.

{¶38} The City's second assignment of error is overruled.

III

{¶39} In its third assignment of error, the City maintains the trial court erred in finding Appellees were entitled to a preliminary injunction as Appellees lacked standing to raise their claims.

{¶40} "When an appellate court is presented with a standing issue, generally a question of law, it applies a de novo standard of review." *City of Johnstown v. Smith*, 2024-Ohio-5128, ¶ 9 (5th Dist.), citing *Adams v. Adams*, 2018-Ohio-944, ¶ 13 (5th Dist.).

{¶41} "It is well established that before an Ohio court can consider the merits of a legal claim, the person seeking relief must establish standing to sue." (Citation omitted.) *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 469 (1999). "In order to have standing to attack the constitutionality of a legislative enactment, the private litigant must generally show that he or she has suffered or is threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general, that the law in

question has caused the injury, and that the relief requested will redress the injury." (Citations omitted.) *Id.* at 469-470.

{¶42} The trial court conducted an initial preliminary injunction hearing on February 21, 2023. Upon conclusion of the hearing, the trial court ordered the parties to further brief the issues by March 7, 2023. Pursuant to the trial court's order, the City filed its post-hearing brief and memorandum contra Appellees' motion for a temporary restraining order and preliminary injunction on March 7, 2023. Therein, the City raised the issue of Appellees' standing. Appellees filed their post-hearing memorandum in support of their motion for temporary restraining order and preliminary injunction on March 7, 2023.

{¶43} Appellees filed an amended complaint on March 10, 2023, adding an additional plaintiff, John Doe 5, who averred he was a resident of the City of Columbus and Delaware County. The amended complaint challenged Ord. No. 3176-2022 and Ord. No. 0680-2023, and sought the same relief sought in the original complaint. Appellees filed a renewed motion for temporary restraining order and preliminary injunction on March 17, 2023.

{¶44} The City argues Appellees failed to establish standing as it relates to the negligent sale of firearm provision of the Ordinance, explaining the ordinance criminalizes the sale of a firearm to an individual who is not permitted to purchase a firearm or an individual acting as a straw purchaser for an individual who is not permitted to purchase a firearm. The City submits Appellees did not aver in their affidavits they are barred by the ordinance either from purchasing a weapon, but wish to do so, or they intend to sell or furnish a weapon to an individual who is barred.

{¶45} The March 10, 2023 amended complaint challenges the large-capacity magazine prohibition, not the negligent sale provisions. In the amended complaint and the affidavits attached thereto, five of the six Appellees indicated he/she possessed, within the geographic boundaries of the City of Columbus, the type of magazine which the ordinance regulates. Appellee John Doe 1 averred he formerly kept, within the geographic boundaries of the City of Columbus, large-capacity magazines and wished to bring those magazines back to his home in the City of Columbus.

{¶46} "Standing does not depend on the merits of the plaintiff's claim that the conduct is illegal or unconstitutional, but 'whether the plaintiffs have alleged such a personal stake in the outcome of the controversy that they are entitled to have a court hear their case.'" *Cool v. Frenchko*, 2022-Ohio-3747, ¶ 13 (10th Dist.), citing *ProgressOhio.Org, Inc. v. JobsOhio*, 2014-Ohio-2380, ¶ 7. We find the allegations in the amended complaint establish Appellees have "such a personal stake in the outcome" as to create standing to challenge the large-capacity magazine prohibition.

{¶47} The City submits the amended complaint cannot cure Appellees' failure to establish standing as the trial court had already conducted the preliminary injunction hearing. The City cites no caselaw to support this assertion. As noted, supra, following the hearing, the trial court provided the parties with an opportunity to brief the issues. Because the trial court had not yet ruled on the preliminary injunction, we find the trial court did not err in permitting Appellees to file an amended complaint which cured the standing issue.

{¶48} The City further maintains Appellees failed to establish standing as it relates to the negligent-storage prohibition, noting, at the time of the preliminary injunction hearing, Appellees John Doe 1-4 and Jane Doe did not aver they had minors visit their homes or they

maintained their firearm in a manner in which a minor could assess the firearm. The City has misstated Appellees' claims. Appellees specifically challenged Columbus City Code §§ 2323.32, 2323.11, 2323.321, and 2323.191, which were enacted by the Ordinances.

{¶49} In its April 25, 2023 Judgment Entry, the trial court stated:

> In addition, the city's standing-to-sue argument in the city's March 7, 2023 post-hearing brief notes that the plaintiffs have challenged not only the city's ban on the possession of large-capacity magazines but also the city's ordinances that define and impose criminal penalties for the offenses of negligent homicide, negligent assault, and negligent storage of a firearm. * * *
>
> * * * in challenging both the safe-storage definition and the three negligent-conduct misdemeanors, the plaintiffs are alleging that the city's attempt to force them to store their firearms in particular "safe" ways in their homes in order to avoid the possible imposition of criminal penalties for negligent conduct runs afoul of R.C. 9.68 * * *
>
> I conclude that the plaintiffs – who are described in paragraph 24 of the amended complaint as "firearm owners," and each of whom resides in Columbus – have properly alleged their standing to challenge the negligent-conduct code provisions and the safe-storage exceptions incorporated into the definitions of those three misdemeanor offenses. That is, the plaintiffs have shown that they hold the requisite "personal stake in the outcome of the controversy," (Citations omitted.).

Id. at pp. 8-9.

{¶50} We agree with the trial court. Appellees have established they have a "personal stake in the outcome of the controversy;" therefore, have standing to challenge Columbus City Code §§ 2323.32, 2323.11, 2323.321, and 2323.191.

{¶51} Based upon the foregoing, the City's third assignment of error is overruled.

IV

{¶52} In the fourth assignment of error, the City challenges the trial court's determination Appellees were entitled to a preliminary injunction. Specifically, the City's asserts the trial court erred in finding Appellees were entitled to a preliminary injunction as the trial court improperly analyzed the "claim through the lens of the Second Amendment," and "rejected" Ohio Supreme Court precedent in *Arnold v. Cleveland*, 67 Ohio St.3d 35 (1993). Brief of Appellant at p. 18. The City submits the trial court should have applied the reasonableness test set forth in *Arnold*, which provides "the right to bear arms is not an unlimited right and is subject to reasonable regulation is an accepted principle among other jurisdictions." *Id.* at 47. We disagree.

{¶53} In its April 25, 2023 Judgment Entry, the trial court explained, even though Appellees did not raise a claim challenging the Ordinance in light of the Second Amendment, the court's consideration of Appellees' "right-to-bear arms claim under Article I, Section 4 of the Ohio Constitution must necessarily be informed by that provision's counterpart in the Second Amendment." *Id.* at p. 21. The trial court noted Ohio courts "have repeatedly recognized" the provisions of the U.S. Constitution which protect individual rights and liberties provide a "floor below which state court decisions may not fall." *Id.*, citing *Arnold*, 67 Ohio St.3d at 42. The trial court concluded, because Appellees relied upon the counterpart to the Second Amendment found in the Ohio Constitution, it "must – in analyzing that state-

constitutional claim – interpret Section I, Article 4 in a way that protects the individual right to bear arms at least as much as the U.S. Supreme Court would protect that right under the Second Amendment." *Id.* at p. 22. We agree with the trial court.

{¶54} In *New York State Rifle & Pistol Assn. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), the U.S. Supreme Court held:

> [W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n. 10, 81 S. Ct. 997, 6 L. Ed. 2d 105 (1961).
>
> *Id.* at 17.

{¶55} This standard "requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *Id.* at 26. The *Bruen* Court acknowledged applying this standard would require courts to engage in analogical reasoning to determine whether a modern firearm regulation was relevantly similar to historical regulations. *Id.* at 28-29. Two important considerations the Court identified were

"how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 29.

{¶56} Two years later, in *United States v. Rahimi*, 602 U.S. 680, 684, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024), the U.S. Supreme Court expounded on *Bruen*, declaring "the appropriate [Second Amendment] analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Id.* at 692, citing *Bruen* at 26-31. "A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Id.*, quoting *Bruen* at 29 and fn. 7.

{¶57} "The *Bruen* and *Rahimi* decisions set forth a two-step framework for analysis of a Second Amendment challenge to a firearm regulation: (1) whether the plain text of the Second Amendment covers the act or course of conduct and (2) if it does, whether the government can demonstrate that the regulation is consistent with the principles that underpin the nation's historical tradition of firearm regulation." (Citations omitted.) *State v. Thompson*, 2026-Ohio-1725, ¶ 36 (10th Dist.).

{¶58} We note *Arnold*, supra, was decided in 1993. "The landscape of Second Amendment jurisprudence changed in 2008, when the United States Supreme Court declared that 'the Second Amendment confer[s] an individual right to keep and bear arms.'" *Thompson*, ¶ 32, citing *District of Columbia v. Heller*, 554 U.S. 570, 595, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). "Two years later, the Court held that 'the Second Amendment right is fully applicable to the States.'" *Id.*, citing *McDonald v. Chicago*, 561 U.S. 742, 750, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010).

{¶59} The trial court found the *Bruen* decision "made clear that when the Second Amendment's text protects the conduct – that is, when the individual seeking to challenge the government's action is attempting to engage in conduct that falls within the scope of keeping and bearing arms – then the government shoulders the burden of justifying, with evidence of longstanding similar national regulations, the restriction in question. April 25, 2023 Judgment Entry at p. 22, citing *Bruen*, at 19. The trial court reviewed federal court decisions which examined magazine-capacity restrictions and "identified no longstanding historical analog to the type of restriction that Columbus has imposed." *Id.* at 24.

{¶60} Recognizing the early stage of the proceeding and based upon the record before it, the trial court concluded Appellees were "likely to succeed in showing the magazines are 'arms' under the right-to-bear arms provisions of the state and federal constitutions." *Id.* The trial court also concluded the City would "probably not be able to demonstrate that its magazine-capacity restriction is consistent with the country's historical tradition of firearm regulation." *Id.* Citing *Arnold*, supra, the trial court reiterated "the right in Article I, Section 4 of the Ohio Constitution must be given 'at least as much protection as the United States Supreme Court has provided' to the analogous right in the Bill of Rights, [Appellees] appear likely to prevail on their claim that the Columbus ordinance violates the right-to-bear-arms provision in the Ohio Constitution." *Id.* at pp. 24-25.

{¶61} Based upon the foregoing, we find the trial court did not err in analyzing Appellees' state-constitutional claim, by interpreting "Section I, Article 4 in a way that protects the individual right to bear arms at least as much as the U.S. Supreme Court would protect that right under the Second Amendment." April 25, 2023 Judgment Entry at p. 22.

{¶62} The City's fourth assignment of error is overruled.

V

{¶63} In the fifth assignment of error, the City also challenges the trial court's determination Appellees were entitled to a preliminary injunction. Specifically, the City argues Appellees failed to present any evidence the Ordinances were unconstitutional and failed to submit any evidence on the remaining preliminary injunction factors.

{¶64} We review a trial court's decision to grant an injunction under an abuse of discretion standard. *Kinder Morgan Cochin L.L.C. v. Simonson*, 2016-Ohio-4647, ¶18 (5th Dist.), citing *Perkins v. Quaker City*, 165 Ohio St. 120, 125 (1956). "In an action for a temporary or permanent injunction, the plaintiff must prove his or her case by clear and convincing evidence." *Id.*, citing *Franklin Cty. Dist. Bd. of Health v. Paxon*, 2003-Ohio-1331 (10th Dist.).

{¶65} "In determining whether to grant injunctive relief, courts take into consideration the following four factors: (1) the likelihood or probability of a plaintiff's success on the merits; (2) whether the issuance of the injunction will prevent irreparable harm to the plaintiff; (3) what injury to others will be caused by the granting of the injunction; and, (4) whether the public interest will be served by the granting of the injunction." *Id.*, citing *Corbett v. Ohio Bldg. Auth.*, 86 Ohio App.3d 44, 49 (10th Dist.1993). These considerations are factors to be balanced; they are not prerequisites which must be satisfied before relief may issue. *Midwest Retailer Associated, Ltd. v. City of Toledo*, 563 F. Supp. 2d 796, 802 (N.D. Ohio 2008)

{¶66} The City maintains Appellees are not likely to prevail on their statutory claims as the Franklin County Court of Common Pleas "has already preliminary ruled that R.C. 9.68 violates the City's home rule authority." Brief of Appellants at p. 21. We disagree.

{¶67} R.C. 9.68 grants "persons in Ohio the right to carry a handgun unless federal or state law prohibits them from doing so" and prohibits municipal ordinances from infringing

on that right." *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 2008-Ohio-4605, ¶ 20. The Ohio Supreme Court has held R.C. 9.68, as originally enacted, does not violate municipal home rule authority. *Cleveland v. State*, 2010-Ohio-6318, ¶ 1. Although R.C. 9.68 has been amended, the current version of "R.C. 9.68(A) does not purport to expand the meaning of constitutional provisions relating to firearms; rather, it articulates the General Assembly's purpose for enacting the statute and identifies specific areas in which political subdivisions may not regulate in conflict with state or federal law." *Cincinnati v. State*, 2024-Ohio-2425, ¶ 53. "[N]othing about Amended R.C. 9.68(B) casts doubt on" the Ohio Supreme Court's holding in *Cleveland v. State*. *Id.* at ¶ 54.

{¶68} Because R.C. 9.68 is constitutional, we find Appellees are likely to prevail on their statutory claims. Accordingly, we find the trial court did not err in finding Appellees were entitled to a preliminary injunction on those claims.

{¶69} Within this assignment of error, the City claims Appellees failed to present evidence to establish the remaining factors necessary to prevail on an application for injunctive relief. We disagree.

{¶70} The trial court found Appellees would suffer irreparable harm if the injunction was not issued. "Injunctive relief is warranted when a statute is unconstitutional, enforcement will infringe upon constitutional rights and cause irreparable harm, and there is no adequate remedy at law." *Magda v. Ohio Elections Comm.*, 2016-Ohio-5043, ¶ 38 (10th Dist.), citing *United Auto Workers Local Union 1112 v. Philomena*, 121 Ohio App.3d 760, 781 (10th Dist. 1998), citing *Olds v. Klotz*, 131 Ohio St. 447, paragraph 2 of the syllabus (1936). "A finding that a constitutional right has been threatened or impaired mandates a finding of irreparable injury as well." *Id.*, citing *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001), citing *Elrod v.*

Burns, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976). We find the trial court did not abuse its discretion in finding Appellees would suffer irreparable harm.

{¶71} The trial court found "[h]arm to third parties from any injunction in this case is hard to determine." April 25, 2023 Judgment Entry at p. 28. Having found the Ordinance was unconstitutional, the trial court determined the Ordinance could not remain in effect. We find no error in the trial court's failure to determine whether third parties would be harmed by the granting of the preliminary junction as the four factors are to be balanced and are not prerequisites which must be satisfied before relief may issue. *Midwest Retailer Associated, Ltd. v. City of Toledo*, 563 F. Supp. 2d at 802. Further, "if the plaintiff shows a substantial likelihood that the challenged law is unconstitutional, no substantial harm to others can be said to inhere in its enjoinment." (Citation omitted.) *Deja Vu of Nashville, Inc. v. Metro. Govt. of Nashville and Davidson Cty.*, 274 F.3d 377, 400 (6th Cir. 2001).

{¶72} The trial court determined "the public-interest factor tilts in [Appellees'] favor." April 25, 2023 Judgment Entry at p. 28. As the trial court correctly noted, "it is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu of Nashville, Inc. v. Metro. Govt. of Nashville and Davidson Cty.*, 274 F.3d 377 at 400.

{¶73} Based upon the foregoing, we find the trial court did not err in finding Appellees were entitled to a preliminary injunction.

{¶74} The City's fifth assignment of error is overruled.

{¶75} The judgment of the Delaware County Court of Common Pleas is affirmed.

{¶76} Costs to Appellants.

By: Hoffman, P.J.

Baldwin, J. and

Montgomery, J. concur.

HON. WILLIAM B. HOFFMAN

HON. CRAIG R. BALDWIN

HON. ROBERT G. MONTGOMERY