EXHIBIT B

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 (1) Granting the Plaintiffs' 2/24/23 Motion Seeking Leave to Proceed Pseudonymously, (2) Denying the Defendants' 2/21/23 and 3/24/23 Motions to Dismiss the Case or Transfer Venue, and (3) Granting the Plaintiffs' 2/16/23 and 3/17/23 Motions for a Preliminary Injunction

At issue in this case is an ordinance enacted by the City of Columbus in December 2022. That ordinance – number 3176-2022 – bars persons in Columbus from carrying or possessing what the city has defined in the ordinance as large-capacity magazines for firearms. See Columbus City Code § 2323.11(N). Those who violate the new ordinance face criminal penalties, including a mandatory jail term. See Columbus City Code § 2323.32.

In February 2023 – several days after the complaint in this case was filed here – the City of Columbus amended the ordinance. In that amended version – designated by the city as ordinance number 0680-2023 – the city pledges to wait until July 1, 2023 before prosecuting persons suspected of violating the ban on large-capacity magazines. See Columbus City Code § 2323.23(E) (2/27/23 version).

The plaintiffs in the case are six Columbus residents whose names are not disclosed in the pleadings. (Five plaintiffs filed the original complaint in February 2023,

and an additional plaintiff is listed in the amended complaint that was filed here on March 10, 2023.)

Those plaintiffs seek declaratory and injunctive relief in the case, contending that both the December 2022 and February 2023 versions of the ordinance violate not only an Ohio statutory provision that addresses firearms but also a state constitutional provision that protects Ohioans' right to bear arms. The plaintiffs allege, too, that the wording of the December 2022 version of the ordinance was unconstitutionally vague.

I held a hearing in the case on February 21, 2023. All parties were represented by counsel at that hearing, and one witness testified on behalf of the defendants. The parties have also filed several legal memoranda on the various motions that are now before me in the case.

For the reasons that follow, I conclude that the plaintiffs can pursue their claims here without disclosing their true names, that the plaintiffs' claims ought not be dismissed and that the case should not be transferred to a different court, and that the plaintiffs are entitled to the preliminary injunction that they seek.

The Plaintiffs Can Pursue Their Claims Without Disclosing Their True Names

The three defendants in the case – the City of Columbus, the city council's president, Shannon Hardin, and the city attorney for Columbus, Zach Klein (collectively "Columbus" or "the city") – contend first that the plaintiffs, all of whom are designated in the complaint with various versions of the pseudonyms John or Jane Doe, ought not be permitted to pursue their claims unless those plaintiffs disclose their true names. I disagree.

Of course Ohio Civil Rule 10(A) requires that the "names and addresses of all the parties" be listed in the caption of each civil complaint. Though the use of pseudonyms by parties in Ohio court cases is "rare," courts can "excuse" plaintiffs from identifying themselves when those persons' "privacy interests substantially outweigh the presumption of open judicial proceedings." *State ex rel. Cincinnati Enquirer v. Shanahan*, 166 Ohio St.3d 382, 2022-Ohio-448, ¶ 36. See also *Doe v. Streck*, 522 F.Supp.3d 332, 333 (S.D. Ohio 2021) (noting that "[l]itigating under a pseudonym is generally disfavored" in the federal courts, but explaining that those courts may allow the practice where privacy interests substantially outweigh the presumption for disclosure).

Factors that courts consider when parties seek to proceed anonymously include "whether the litigation compels plaintiffs to disclose an intention to violate the law, thereby risking criminal prosecution." *Doe v. Streck*, 522 F.Supp.3d at 333. See also *D.E. v. John Doe*, 834 F.3d 723, 728 (6th Cir. 2016) (same); *Shanahan*, 2022-Ohio-448 at ¶ 36 ("threat of retaliation against the plaintiff" who seeks to sue under a pseudonym is a factor that courts can consider).

Given that Columbus 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. 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 undermine their liberty interests. See *State v. Arnold*, 147 Ohio St.3d 138, 2016-Ohio-1595, ¶ 31 ("The right [that the Fifth Amendment and its Ohio

constitutional counterpart embody] . . . is the right of an individual to force the state to produce the evidence against him or her by its own labor, not by forcing the individual to produce it from his or her own lips").

On the other hand, I see no prejudice that would flow to the city from the plaintiffs' proposed use of pseudonyms in this litigation. Columbus 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 prosecutions 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.

On balance, then, I conclude that the plaintiffs' interest in proceeding under pseudonyms outweighs the interests of the city and the public in knowing the six

plaintiffs' true names. The plaintiffs' motion for permission to pursue their claims using pseudonyms is granted.

The City's Pledge to Wait Until July Before Prosecuting Suspected Violators of the Ordinance Does Not Extinguish the Plaintiffs' Claims

In light of the city's decision to defer until July 1, 2023 any prosecutions of persons suspected of violating the city's ban on large-capacity magazines, the city – in written arguments filed here on March 10, 2023 – contends that this case is "moot." I disagree.

Perhaps the city's argument on this point would be better categorized under the ripeness doctrine than the mootness one, as mootness is a concept that calls for courts to refrain from addressing cases in which no "actual controversy exists." *Medical Mutual of Ohio v. FrontPath Health Coalition*, 2023-Ohio-243, ¶ 26 (6th Dist.). See also *Lake Front Medical, LLC v. Ohio Dept. of Commerce*, 202 N.E.3d 156, 2022-Ohio-4281, ¶ 59 (11th Dist.) (a case is moot if it raises "purely academic" issues); *State ex rel. Maxwell v. Brice*, 167 Ohio St.3d 137, 2021-Ohio-4333, ¶ 18 ("A case is moot when without any fault of the defendant, an event occurs which renders it impossible for a court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever") (brackets and quotations omitted); *City of Cincinnati v. State*, 121 N.E.3d 897, 2018-Ohio-4498, ¶ 2 (1st Dist.) ("Under the mootness doctrine, American courts will not decide cases in which there is no longer an actual legal controversy between the parties").

The doctrine of ripeness, on the other hand, "prevents courts from deciding cases or controversies prematurely." *F.P. Developm., LLC v. Charter Twp. of Canton, Michigan*, 16 F.4th 198, 203 (6th Cir. 2021). See also *Doster v. Kendall*, 54 F.4th 398,

415 (6th Cir. 2022) (the ripeness doctrine "bars a plaintiff from suing too early"); *Bogart v. Gutmann*, 115 N.E.3d 711, 2018-Ohio-2331, ¶ 17 (1st Dist.) ("Ripeness is an issue of timing").

In any event, though the immediacy of the threat that the plaintiffs describe in their amended complaint may have been lessened by the city's decision to wait until July 1, 2023 before initiating any prosecutions under the ordinance, the ordinance remains in place, and a live controversy between the parties surely exists. The city's ban on large-capacity magazines is not a theoretical one. That ban has, in fact, been enacted, is in effect now, and will evidently be enforced on a date certain. Nothing about the plaintiffs' effort to challenge the ordinance now is inconsistent with what one court has recently described as the "basic principle of ripeness." See *State v. Meadows*, 184 N.E.3d 168, 2022-Ohio-287, ¶ 43 (4th Dist.) (indicating that ripeness is grounded on the idea that "judicial machinery should be conserved for problems which are real or present and imminent, not squandered on problems which are abstract or hypothetical or remote") (quotations omitted).

The risk of prosecution hanging over the anonymous plaintiffs may have been deferred for a few months, but the July 1, 2023 effective date for the city's enforcement efforts is fast approaching. And the latest version of the ordinance calls for persons holding large-capacity magazines to – before July 1, 2023 – remove those magazines from the city's geographic boundaries, sell the magazines to licensed firearms dealers elsewhere, or surrender the magazines to the city's division of police. See Columbus City Code § 2323.23(E), as amended on 2/27/23. (A copy of that document is marked as Exhibit H in the plaintiffs' 3/10/23 amended complaint). Those choices are ones that

the plaintiffs and others are directed by the ordinance to make now to comply with a ban that is in effect now. I conclude that the case is neither moot nor unripe.

The Concerns Raised by the City About the Plaintiffs' Standing to Sue Appear to Have Been Addressed in the Amended Complaint

In written arguments filed here on March 7, 2023, the city has challenged the plaintiffs' standing to sue. The city's arguments on the standing issue are grounded in part on the city's view that the original complaint failed to allege that the original five plaintiffs – aside from John Doe 2 – actually possess the type of large-capacity magazines that the ordinance regulates.

The plaintiffs must, of course, offer some evidence about their standing to bring their claims. See *A. Philip Randolph Institute of Ohio v. LaRose*, 493 F.Supp.3d 596, 605 (N.D. Ohio 2020) ("At the preliminary injunction stage, plaintiffs must show they are likely to successfully prove standing"); *Bradley v. United States*, 402 F.Supp.3d 398, 402 (N.D. Ohio 2019) ("In the context of injunctive relief, a plaintiff must demonstrate a personal stake in the outcome in order to assure that concrete adverseness which sharpens the presentation of issues necessary for the proper resolution of constitutional questions") (quotations omitted).

The plaintiffs' March 10, 2023 amended complaint appears to have addressed the city's concerns about any lack of clarity on the large-capacity-magazine ownership issue in the original complaint. That amended complaint and the attached affidavits indicate that five of the six current plaintiffs possess within the city's geographic boundaries the type of magazines that the ordinance regulates. The other plaintiff – John Doe 1 – alleges that he formerly kept within the city's geographic boundaries some large-capacity magazines that he owns, and he wishes to bring those magazines back to his

home in Columbus. Those claims in John Doe 1's affidavit expand on and are not inconsistent with the allegations in paragraph 25 of the March 10, 2023 amended complaint, and the other plaintiffs' current possession – and intended ongoing possession – of the regulated magazines in the City of Columbus is noted in paragraphs 26, 27, 29, 32, and 36 of the amended complaint for John Does 2, 3, 4, and 5, as well as Jane Doe, respectively.

I readily conclude that any shortcomings in the original complaint on the issue of the plaintiffs' standing to challenge the city's efforts to regulate large-capacity magazines have been remedied by the amended complaint. See *Cool v. Frenchko*, 200 N.E.3d 562, 2022-Ohio-3747, ¶ 24 (10th Dist.) ("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") (quotations omitted); *Barber v. Charter Twp. of Springfield, Michigan*, 31 F.4th 382, 390 (6th Cir. 2022) ("a person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial"); *A. Philip Randolph Institute of Ohio v. LaRose*, 493 F.Supp.3d at 605 ("When one party has standing to bring a claim, the identical claims brought by other parties to the same lawsuit are justiciable").

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. (Those provisions are codified in Columbus City Code §§

2303.05, 2303.14, and 2323.191, respectively, and they are mentioned in paragraph 77 of the amended complaint.)

Each of those negligent-conduct offenses in the city's code includes the term "safe storage," which is itself defined under Columbus City Code § 2323.11(O) in the December 2022 and February 2023 versions of the city's code. "Safe storage" – according to both versions of the ordinance – entails the installation on a firearm of a device that is "designed to prevent the firearm from being operated" or entails the storage of a firearm in a locked container. Either kind of "safe storage" by any person who possesses a firearm within the city's border exempts that person from criminal penalties under the three negligent-conduct misdemeanor offenses that the plaintiffs challenge.

If I understand the plaintiffs' argument 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. That statutory provision addresses the use and "stor[age]" of firearms, and it indicates that the state's law "preempts" any "restriction[s]" imposed by other persons or entities.

I conclude that the plaintiffs – who are described in paragraph 24 of the amended complaint as "firearms owners," and each of whom resides in Columbus – have properly alleged their standing to challenge the negligent-conduct code provisions and the safe-storage exemptions 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." *O'Neal v. State*, 167 Ohio St.3d 234, 2021-Ohio-

3663, ¶ 10. See also *Williams v. City of Cleveland*, 907 F.3d 924, 933 (6th Cir. 2018) ("When seeking injunctive or declaratory relief, a plaintiff must show that she is under threat of suffering injury in fact that is concrete and particularized, and the threat must be actual and imminent, not conjectural or hypothetical") (brackets and quotations omitted); *Grand Truck Western R.R. Inc. v. Brotherhood of Maintenance of Way Employees Div.*, 643 F.Supp.2d 941, 948 (N.D. Ohio 2009) ("For standing in the context of declaratory judgments, one must ask whether the parties have adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment even though the injury-in-fact has not yet been completed") (quotations omitted).

Venue is Proper in Delaware County

The city challenges, too, the plaintiffs' decision to present their claims here rather than in Franklin County. I conclude that the plaintiffs can permissibly seek relief in Delaware County.

Venue in Ohio courts is of course governed by Civil Rule 3(C). Under that rule, venue properly lies in any of several places, including – among others – the county in which "the defendant resides," any county in which "the property . . . is situated if the subject of the action is . . . tangible personal property," and the county in which "all or part of the claim for relief arose." See Civ.R. 3(C)(1), (5), and (6). Those and the other provisions in Civil Rule 3(C) "have equal status, and a plaintiff may choose among them with unfettered discretion." *Solomon v. Excel Marketing, Inc.*, 114 Ohio App.3d 20, 25, 682 N.E.2d 724 (2nd Dist. 1996) (noting that the provisions in the rule "each may be a proper basis for venue").

I readily find that Delaware County is a proper forum under any and all of those three provisions listed in the paragraph just above.

First, the defendant City of Columbus has – on multiple occasions over the course of several years – annexed real property that lies in Delaware County, and the city therefore now "resides" in Delaware County. The records of the Delaware County Board of Elections indicate that seven voting precincts in the county lie within Columbus's corporate limits, and the defendants themselves acknowledge that a "small sliver of the City of Columbus happens to be inside Delaware County." (2/21/23 motion to dismiss at page 17.)

Likewise, the defendant council president and defendant city attorney are empowered to perform their duties within the portion of the city that lies in Delaware County, and they therefore reside here too when performing their official duties. As Section 1 of the city's charter indicates, the city "ha[s] all powers" permitted by Ohio law and may "exercise[] and enforce[]" those powers where the city's corporate "limits now are, or may hereafter be."

The city claims that its only place of business – the only place it "resides" for venue purposes – is Franklin County, where Columbus City Hall is located. That argument is akin to one that a federal court in Michigan considered when Michigan's secretary of state and its director of elections were sued in the U.S. District Court for the Eastern District of Michigan. In that case, the defendants claimed that "the only district in which the secretary of state 'resides' is where the State capital is located." *Bay County Democratic Party v. Lund*, 340 F.Supp.2d 802, 806 (E.D. Mich. 2004). In rejecting the Michigan defendants' claim that venue was proper only in the U.S. District Court for the Western District of Michigan, the court said this: "The defendants' argument that Michigan's secretary of state performs her official duties only in Lansing,

Michigan and therefore may be sued only there does not withstand even the basest analysis." *Id.* (applying the federal venue provision in 28 U.S.C. 1391).

I reach the same conclusion about the city's lack-of-venue claim here. The officials named in this lawsuit serve residents of the parts of Columbus that lie in Delaware County just as much as those officials serve the city's residents who live in Franklin County. The Columbus residents who live in Delaware County vote in city-council and city-attorney elections, and they pay taxes to the city. Most importantly, those residents face criminal penalties for violations of the city's ordinances just as Columbus residents who live in Franklin County do. The city has certainly not pledged to halt at the county line the city's enforcement of the ban on large-capacity magazines. In short, the city and its officials – in the words of Civ.R. 3(C)(1) – "reside" here, and they are therefore just as answerable here for their actions as they are in Franklin County. As the court in the *Bay County* case in Michigan noted on the venue challenge raised by that state's officials in that case, "the effects of the [state's] election directive are felt statewide, including within Bay County where one of the plaintiffs is located," and so venue was proper in the district where that county was located. *Bay County*, 340 F.Supp.2d at 809.

In any event, other venue provisions in Civ.R. 3(C)(5) and (C)(6) certainly permit the plaintiffs to pursue their claims here. According to the amended complaint, John Doe 5 resides in the Delaware County portion of Columbus, and he possesses in his home the type of large-capacity magazine that the city's ordinance regulates. (¶ 32 of the 3/10/23 amended complaint.) That same plaintiff's affidavit attached to the amended complaint echoes those claims, and John Doe 5 indicates in his affidavit that he intends to continue to possess his 30-round magazine in his Delaware County home

after July 1, 2023, when the city will begin prosecuting those who possess large-capacity magazines like his.

Those allegations surely are sufficient to permit the plaintiffs' claims to be heard here. And "the only basis for a transfer of venue from a county where the venue is proper is when the transfer is necessary to obtain a fair trial." *State ex rel. Starner v. DeHoff*, 18 Ohio St.3d 163, 165 (1985) (citing Civ.R. 3(C)(4), which has since been renumbered as Civ.R. 3(D)(4)). The city does not appear to contend that any Delaware County trial in this case would be unfair, and I am not aware of any reason why the case cannot be heard and decided fairly here.

The city's request that I transfer this case to Franklin County is denied.

The Jurisdictional-Priority Rule Does Not Bar the Plaintiffs From Pursuing Their Claims Here

Next, the city contends that this court cannot hear the plaintiffs' claims because legal claims similar to those at issue in this case were raised earlier in other counties' courts. That argument by the city – which rests on a doctrine known as the "jurisdictional-priority rule" – is unpersuasive.

"The jurisdictional-priority rule provides that 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*, 169 Ohio St.3d 380, 2022-Ohio-3089, ¶ 14. See also *Primesolutions Securities, Inc. v. Winter*, 68 N.E.3d 202, 2016-Ohio-4708, ¶ 10 (8th Dist.) ("Once a court of competent jurisdiction acquires jurisdiction over an action, its authority continues until the matter is completely and finally disposed of, and no court of co-ordinate jurisdiction may interfere with its proceedings"); *Holmes County Bd. of*

Comm'rs. v. McDowell, 169 Ohio App.3d 120, 2006-Ohio-5017, ¶ 27 (5th Dist.) (under the jurisdictional-priority rule, "the court whose power was last invoked should dismiss the claims for lack of subject-matter jurisdiction").

The doctrine "exists to promote judicial economy and avoid inconsistent results." *State ex rel. Hasselbach v. Sandusky County Bd. of Elec.*, 157 Ohio St.3d 433, 2019-Ohio-3751, ¶ 8. See also *Davis v. Cowan Systems*, 2004-Ohio-515, ¶ 17 (8th Dist.) ("inconsistent rulings . . . is exactly what the jurisdictional priority rule was designed to prevent").

Yet, time and again, Ohio courts have explained that the jurisdictional-priority rule applies only where the parties in the earlier and later cases are the same. See, e.g., *State ex rel. Maron v. Corrigan*, 203 N.E.3d 52, 2022-Ohio-4406, ¶ 10 (8th Dist.) ("if the first case does not involve the same cause of action or the same parties as the second case, the first case will not prevent the second case from going forward"); *State ex rel. Hasselbach v. Sandusky County Bd. of Elec.*, 157 Ohio St.3d 433, 2019-Ohio-3751, ¶ 9 ("if the second case is not . . . between the same parties, the former suit will not prevent the latter") (brackets omitted); *In re Adoption of M.G.B.-E.*, 154 Ohio St.3d 17, 2018-Ohio-1787, ¶ 25 ("The jurisdictional-priority rule applies when cases in multiple courts of concurrent jurisdiction involve the same parties"); *Primesolutions Securities, Inc. v. Winter*, 68 N.E.3d 202, 2016-Ohio-4708, ¶ 11 (8th Dist.) ("the jurisdictional priority rule operates only if the second action is between the same parties").

The city is certainly correct that trial courts in Franklin County and Fairfield County have been asked to address legal issues similar to those now raised in this case, and the cases in those other counties were filed before the plaintiffs filed their case here in February of this year. See *City of Columbus v. State of Ohio*, Franklin C.P. No. 19-

CV-2281 (filed on 3/19/19) and *State of Ohio v. City of Columbus*, Fairfield C.P. No. 2022-CV-00657 (filed on 12/14/22).

In the Franklin County case – which was filed by the City of Columbus – Judge McIntosh issued a decision in November 2022 enjoining the enforcement of R.C. 9.68 and concluding that that firearms-focused statutory provision conflicts with Ohio's constitutional provision that confers home-rule powers on municipalities like Columbus. Weeks after the issuance of that court ruling favoring the city's position, Columbus enacted the municipal ordinance at issue here.

The Fairfield County case, meanwhile, was filed by the Ohio Attorney General last December on behalf of the State of Ohio shortly after Columbus enacted its ordinance regulating large-capacity magazines. Judge Berens has already addressed in that case some legal issues surrounding that ordinance, which is of course the same one that is at issue in the case now before me. In fact, citing Judge McIntosh's earlier ruling and relying on the jurisdictional-priority rule, Judge Berens, in a January 5, 2023 decision, concluded that the Attorney General on behalf of the State of Ohio cannot pursue in Fairfield County a legal challenge under R.C. 9.68 to the ordinance at issue here.

Appeals by the State of Ohio in the Franklin County and Fairfield County cases have been filed but are not yet resolved on the merits, and some trial-court litigation appears to be ongoing in the Fairfield County case too.

In short, the city rightly claims here that earlier litigation in trial courts outside Delaware County has focused on and continues to focus on the same large-capacity-magazine ordinance enacted by the city and the same state statutory and constitutional provisions that the parties are relying on here.

The city's argument, though, that that earlier litigation deprives this court of subject-matter jurisdiction to hear this case falters on the same-parties prong of the jurisdictional-priority rule. That is, the city cannot show that any of the six Columbus residents who are the plaintiffs in this case have played or are playing any role – whether as parties or otherwise – in the earlier Franklin County and Fairfield County cases. The sole parties in the Franklin County and Fairfield County cases are the City of Columbus and the State of Ohio. Certainly, some of the same attorneys who have appeared here on behalf of Columbus are involved, too, in those earlier cases in other courts, and the same is true for the assistant attorneys general who are representing the State of Ohio, which has filed an amicus brief in this case. The six Columbus residents who are the plaintiffs here, however, are not parties to those other cases, and the plaintiffs' attorneys from the Buckeye Institute likewise appear to be playing no role in those cases before Judges McIntosh and Berens.

No Ohio cases interpreting the jurisdictional-priority rule support the city's view that the plaintiffs here are barred from pursuing their claims in this court just because other parties have raised related claims elsewhere. Indeed, nothing in the familiar concepts of res judicata or collateral estoppel suggests that the parties in this case – after playing no role in and after presenting no claims or arguments in Franklin County or Fairfield County on the issues that are contested here – are now bound by the rulings issued by trial courts in those other counties.

The view that the city presents here – urging me to dismiss the plaintiffs' claims because the city and the State of Ohio have asked other courts to hear similar claims – has never been embraced by state or federal courts. See, e.g., *Cooper v. Harris*, 581 U.S. 285, 297 (2017) ("one person's lawsuit generally does not bar another's, no matter how

similar they are in substance"); *Pedreira v. Sunrise Children's Services, Inc.*, 802 F.3d 865, 870 (6th Cir. 2015) ("an adjudication on the merits normally lacks res-judicata effect against persons not a party to the suit giving rise to it"); *Amos v. PPG Industries, Inc.*, 699 F.3d 448, 451 (6th Cir. 2012) (describing as "a deep-rooted historic tradition" the principle that "everyone should have his own day in court"); *State ex rel. Schachter v. Ohio Pub. Employees Retirem. Bd.*, 121 Ohio St.3d 526, 2009-Ohio-1704, ¶ 31 ("It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process") (quotations omitted); *Beneficial Ohio, Inc. v. Ellis*, 121 Ohio St.3d 89, 2009-Ohio-311, ¶ 14 ("The general rule is that one not a party to a suit is not affected by the judgment") (quotations omitted).

Because the plaintiffs in this case have played no role in the earlier related litigation in Franklin County and Fairfield County, the plaintiffs are not barred by the jurisdictional-priority rule from pursuing their claims here. The city's motion urging me to dismiss the case due to what the city says is an alleged absence of subject-matter jurisdiction is denied.

The City Ordinance Banning the Possession of Large-Capacity Magazines and Regulating the So-Called "Safe Storage" of Firearms Appears to Be Unenforceable In Light of R.C. 9.68

The city ordinance challenged by the plaintiffs imposes criminal penalties on persons who possess, purchase, or offer to sell "large-capacity magazines" as the city defines that term. See Columbus City Code § 2323.11(N) (defining "large capacity magazine") and § 2323.32 (setting misdemeanor penalties for the offense of unlawful carrying or possession of a large-capacity magazine). The ordinance also defines the "safe storage" of firearms and indicates that persons who fail to store their firearms as

the city directs can likewise face criminal penalties for various misdemeanor offenses. See Columbus City Code § 2323.11(O) (defining "safe storage"), § 2303.05 (negligent homicide), § 2303.14 (negligent assault), and § 2323.191 (negligent storage of a firearm).

Though Ohio does define the crimes of negligent homicide and negligent assault and does set criminal penalties for them, Ohio law does not contain any "safe-storage" language and appears to impose no regulations at all on the size of firearm magazines or on the number of cartridges or rounds of ammunition that a firearm or any of its related components may contain.

According to the plaintiffs, the Columbus ordinance conflicts with R.C. 9.68, which is a state statutory provision that "declares null and void" any ordinance or other regulation that imposes any firearms-related restrictions beyond those found in state or federal law. I agree.

The state statutory provision on which the plaintiffs rely – R.C. 9.68 – was first enacted in 2007 soon after the Supreme Court of Ohio concluded that Cincinnati had properly imposed a ban on the possession of any semiautomatic rifle with a magazine capacity of more than 10 rounds. In that 2006 decision – *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422 – the Court found that Cincinnati could, under the home-rule provision of the Ohio Constitution, impose penalties for the possession of those more-than-10-rounds magazines even though state law then imposed regulations on semiautomatic firearms capable of firing "more than thirty-one cartridges" at a time. *Id.* at ¶¶ 3, 25. Because no provision of Ohio law indicated that "municipalities may not prohibit the possession of lower-capacity firearms than are prohibited by the statute," Cincinnati was free to "regulate the possession of lower-capacity semiautomatic firearms in accordance with local conditions." *Id.* at ¶¶ 23, 24.

R.C. 9.68 appears to have abrogated that 2006 decision. See *Columbus v. State of Ohio*, 2023-Ohio-195, ¶ 18 (10th Dist.) (R.C. 9.68 has the "stated purpose of promoting clarity and uniformity of regulation of firearms throughout the state"); *Ohioans for Concealed Carry, Inc. v. City of Cleveland*, 90 N.E.3d 80, 2017-Ohio-1560, ¶ 25 (8th Dist.) (citing R.C. 9.68 in striking several firearm regulations enacted by the city of Cleveland and explaining that "[t]he General Assembly has expressed the intent to require uniform statewide firearm regulation, and a municipality can no longer legislate in the field so as to conflict with state law"); *Cleveland v. State of Ohio*, 128 Ohio St.3d 135, 2010-Ohio-6318, ¶ 35 (citing R.C. 9.68 in invalidating several firearm regulations enacted by the city of Cleveland and explaining that "R.C. 9.68 is a general law that displaces municipal firearm ordinances"); *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, ¶ 41 (citing R.C. 9.68 in striking a firearm regulation enacted by the city of Clyde and explaining that "[t]he General Assembly could not have been more direct in expressing its intent for statewide comprehensive . . . laws" regulating the possession of firearms).

I well understand that the procedural posture of this case is such that the city has not yet presented here a full-throated home-rule argument in support of the municipal firearms-related regulations at issue in this case, but the Supreme Court of Ohio has undeniably already rejected – in *Cleveland v. State of Ohio*, 128 Ohio St.3d 135, 2010-Ohio-6318 – a home-rule challenge to R.C. 9.68. Also, the parties agree that Ohio law imposes no limitations of the sort that the Columbus ordinance has imposed on so-called high-capacity magazines and on the safe storage of firearms. R.C. 9.68 indicates, too, that statewide uniformity in the regulation of the "possession" and "storage" of "firearms, their components, and their ammunition" is now compelled by the State and

that any firearms-related regulations "[e]xcept as specifically provided by" state or federal law are "null and void."

In light of the current wording of R.C. 9.68 and in light of the Supreme Court's earlier rejection of a home-rule challenge to that provision, I conclude that any limitations or restrictions in the Columbus ordinance that go beyond those embodied in state law cannot be enforced by the city.

The Same Columbus Ordinance Also Appears to Violate the Ohio Constitution's Provision Protecting the Right to Bear Arms

In their challenge to the city's ordinance, the plaintiffs rely, too, on the right to bear arms in Article I, Section 4 of the Ohio Constitution. According to that provision, "[t]he people have the right to bear arms for their defense and security." Those words – the plaintiffs say – do not allow Columbus to ban the possession of so-called large-capacity magazines.

Though the record before me at this early stage of the litigation is necessarily limited, I conclude that the plaintiffs are likely to prevail on their claim that the city's ordinance violates the right-to-bear-arms provision in the state constitution.

The plaintiffs have chosen, in raising a constitutional challenge to the Columbus ordinance, to rely not on the U.S. Constitution's Second Amendment but instead on that amendment's counterpart in our own state constitution. The Second Amendment of course provides that "the right of the people to keep and bear [a]rms[] shall not be infringed." That right – the U.S. Supreme Court tells us – "is fully applicable to the states" and is a right "among those fundamental rights necessary to our system of ordered liberty." *McDonald v. City of Chicago*, 561 U.S. 742, 749, 778 (2010). Still, the state and federal right-to-bear-arms provisions do differ in their wording – albeit

slightly – and the plaintiffs have opted to ground their right-to-bear-arms challenge on one and not the other.

Even though any conflict between the Columbus ordinance and the Second Amendment has not been raised in the plaintiffs' complaint, my consideration of the plaintiff's 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. As Ohio courts have repeatedly recognized, the U.S. Constitution's provisions that protect "individual rights and civil liberties" provide a "floor below which state court decisions may not fall." *Arnold v. Cleveland*, 67 Ohio St.3d 35, 42 (1993). See also *In the Matter of the Adoption of Y.E.F.*, 163 Ohio St.3d 521, 2020-Ohio-6785, ¶ 16 ("The United States Constitution, when applicable to the states, provides a floor of protection with respect to individual rights and civil liberties; states may not deny individuals the minimum level of protection prescribed by the federal constitution"); *Preterm Cleveland v. Voinovich*, 89 Ohio App.3d 684, 690 (10th Dist. 1993) ("the states cannot restrict individual rights afforded by the United States Constitution in a manner not permitted by that Constitution"). As the Court in *Arnold* explained, state courts in Ohio – in interpreting the state constitution – can provide "greater civil liberties and protections to individuals and groups," but those courts must, at a minimum, "provide at least as much protection as the United States Supreme Court has provided in its interpretations of the federal Bill of Rights." *Arnold*, 67 Ohio St.3d at 42. See also *State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, ¶ 46 ("As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections").

So even though the plaintiffs have not claimed that the Columbus ordinance violates the Second Amendment, their reliance on that amendment's right-to-bear-arms counterpart in our state constitution means that this and other Ohio courts 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.

And the U.S. Supreme Court explained last year that any Second Amendment challenge must focus on two things: the Amendment's text and the country's historical tradition. "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *New York State Rifle & Pistol Assn. v. Bruen*, ___ U.S. ___, 142 S. Ct. 2111, 2126 (2022). Then if the individual's conduct is protected by the Second Amendment, any government official seeking to regulate that conduct "must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

That 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. See *Bruen*, 142 S. Ct. at 2127 ("the government must affirmatively prove that its firearms regulation is part of the historical tradition"); *Id.* at 2130 ("The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation"); *Id.* at 2133 ("analogical reasoning requires . . . that the government identify a well-established and representative historical *analogue*"); *Id.* at 2149, n.25 ("again, the

burden rests with the government to establish the relevant tradition of regulation"); *Id.* at 2150 ("Of course, we are not obliged to sift the historical materials for evidence to sustain New York's statute. That is . . . [New York's] burden").

The conduct in which the plaintiffs seek to engage is of course the possession, purchasing, keeping, or selling of what the city has defined as large-capacity magazines. I certainly acknowledge that this case has only recently been filed, that the parties have engaged in little if any discovery under the civil rules, and that the evidentiary record before me is limited. I will certainly keep an open mind as the record expands and as more information comes to me through briefing or in the courtroom. I must at this early stage, though, address the plaintiff's request for a preliminary injunction, and I must, in doing so, necessarily rely on the record before me and on the legal arguments presented by the parties thus far.

With that in mind, I believe at this stage that the plaintiffs are likely to succeed on their constitutional claim. The magazines in question do appear to fall within the scope of the Second Amendment. See *Bruen*, 142 S. Ct. at 2132 ("the Second Amendment's definition of 'arms' . . . covers modern instruments that facilitate armed self-defense"); *Worman v. Healey*, 922 F.3d 26, 36 (1st Cir. 2019) (assuming without deciding that a magazine restriction implicates the Second Amendment); *Assn. of New Jersey Rifle & Pistol Clubs v. Att'y. Gen'l. of New Jersey*, 910 F.3d 106, 116 (3rd Cir. 2018) ("Because magazines feed ammunition into certain guns, and ammunition is necessary for such a gun to function as intended, magazines are 'arms' within the meaning of the Second Amendment").

And at this point, the city has not demonstrated that its ban on the possession of large-capacity magazines is consistent with national historical traditions. A majority of

the states in the country place no restrictions on magazine capacity, and few impose criminal penalties for the possession of magazines that the government views as too large. See *Duncan v. Becerra*, 970 F.3d 1133, 1142 (9th Cir. 2020) (large-capacity magazines "may be lawfully possessed in 41 states and under federal law," and "[m]illions of Americans across the county" own them).

Other courts that have examined other magazine-capacity restrictions have identified no longstanding historical analog to the type of restriction that Columbus has imposed. See, e.g., *Duncan v. Bonta*, 19 F.4th 1087, 1159 (9th Cir. 2021) (Bumatay, J., dissenting) ("In the end, California fails to point to a single Founding-era statute that is even remotely analogous to its magazine ban"); *Duncan v. Becerra*, 970 F.3d at 1149 (providing a "long march through the history of firearms" and concluding that "firearms capable of holding more than ten rounds of ammunition have been available in the United States for well over two centuries"); *Heller v. District of Columbia*, 670 F.3d 1244, 1260 (D.C. Cir. 2011) (" We are not aware of evidence that prohibitions on . . . large-capacity magazines are longstanding and thereby deserving of a presumption of validity").

Based, then, on the record before me at this point, I conclude that the plaintiffs are likely to succeed in showing that magazines are "arms" under the right-to-bear-arms provisions of the state and federal constitutions. I conclude, too, that Columbus will probably not be able to demonstrate that its magazine-capacity restriction is consistent with the country's historical tradition of firearm regulations.

For those reasons, and because – as the Supreme Court of Ohio said three decades ago in *Arnold*, 67 Ohio St.3d at 42 – 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, the plaintiffs appear likely to prevail on their claim that the Columbus ordinance violates the right-to-bear-arms provision in the Ohio Constitution.

The Plaintiffs' Vagueness Challenge Falls Short

The plaintiffs have included in their amended complaint as well a claim that the version of the Columbus large-capacity-magazine ordinance that was in effect from December 5, 2022 until February 27, 2023 was impermissibly vague in violation of the Ohio Constitution's due-process clause. I disagree with the plaintiffs' argument on this final issue.

During the 12-week time period cited by the plaintiffs, the ordinance defined "large capacity magazine" as a magazine that could hold "thirty . . . or more" rounds of ammunition, while also indicating that the term "large capacity magazine" did not apply to any magazine that had been altered so that it could not accommodate "more than thirty rounds." See Columbus City Code § 2323.11(N) (as enacted on 12/5/22). The city has now amended the "more than thirty rounds" language to "thirty . . . or more rounds." See Columbus City Code § 2323.11(N) (as amended on 2/27/23). The original wording – according to the plaintiffs – meant that a 30-round magazine was both included and excluded from the definition of banned items in the city.

A party challenging a law on vagueness grounds must show that the provision in question fails to provide a person of ordinary intelligence fair notice of what is prohibited or is so standardless that it authorizes arbitrary or discriminatory enforcement. See *Johnson v. Morales*, 946 F.3d 911, 929 (6th Cir. 2020); *Skilling v. United States*, 561 U.S. 358, 402-03 (2010). "A statute does not need to avoid all vagueness, and is not void for vagueness simply because it could have been worded

more precisely or with additional certainty." *In re E.D.*, 194 Ohio App.3d 534, ¶ 9 (9th Dist. 2011). As the Supreme Court of Ohio has said in rejecting a vagueness challenge to Ohio's disorderly-conduct statute, "[t]he test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *State v. Carrick*, 131 Ohio St.3d 340, 2012-Ohio-608, ¶ 14 (2012). See also *Buckle Up Festival, LLC v. City of Cincinnati*, 336 F. Supp.3d 882, 887 (S.D. Ohio 2018) ("perfect clarity and precise guidance have never been required") (quotations omitted).

I see no vagueness in the ordinance's original wording. Those magazines capable of holding 30 or more rounds of ammunition were (and are still) defined by Columbus as "large capacity magazines." Columbus City Code § 2323.11(N). The additional language in the ordinance that the plaintiffs say made that definition vague was the wording that excluded from the definition of a large-capacity magazine any magazine that had been permanently altered so that it could not accommodate 31 or more rounds. That exception, though, did not say – as the plaintiffs claim – that a 30-round magazine is not a large-capacity magazine.

Any 30-round magazine counts as a large-capacity magazine under the ordinance. The exception faulted by the plaintiffs simply indicated that a permanently altered magazine unable to accommodate 31 or more rounds could not be considered a large-capacity magazine. That exception said nothing about a magazine capable of accommodating exactly 30 rounds. I conclude, therefore, that a reasonable reader of the ordinance – at least as it was originally worded before the current version took effect in late-February 2023 – would readily be able to discern that a 30-round magazine was in fact a large-capacity magazine. After all, the definition "thirty . . . or more rounds"

certainly encompassed any magazine capable to holding exactly 30 rounds, and the exception for any magazines that had been altered so that they could not accommodate "more than thirty rounds" did not alter or undercut that language.

The plaintiffs are unlikely to prevail on their void-for-vagueness claim.

The Plaintiffs Are Entitled to a Preliminary Injunction

In addressing the plaintiffs' request for a preliminary injunction to block the enforcement of the city's regulations on high-capacity magazines, I must of course consider the familiar four-factor test that state and federal courts have long applied. See, e.g., *Whole Women's Health v. Jackson*, ___ U.S. ___, 141 S. Ct. 2494, 2495 (2021) ("To prevail in an application for a stay or an injunction, an applicant must carry the burden of making a strong showing that it is likely to succeed on the merits, that it will be irreparably injured absent a stay, that the balance of the equities favors it, and that a stay is consistent with the public interest") (quotations omitted); *Kinder Morgan Cochin LLC v. Simonson*, 66 N.E.3d 1176, 2016-Ohio-4647, ¶ 18 (5th Dist.) ("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"). The four factors are to be "balanced" by the court, and they are "not prerequisites that must be met." *Midwest Retailer Associated, Ltd. v. City of Toledo*, 563 F.Supp.2d 796, 803 (N.D. Ohio 2008) (quotations omitted).

As I have explained above, the plaintiffs appear likely to succeed on their R.C. 9.68 claim and on their right-to-bear-arms claim under Article I, Section 4 of the Ohio Constitution.

I conclude that the irreparable-harm factor also tilts in the plaintiffs' favor. See *Overstreet v. Lexington-Fayette Urban County Govt.*, 305 F.3d 566, 578 (6th Cir. 2002) ("Courts have . . . held that a plaintiff can demonstrate that a denial of an injunction will cause irreparable harm if the claim is based upon a violation of the plaintiff's constitutional rights"); *Friedmann v. Parker*, 573 F.Supp.3d 1221, 1233 (M.D. Tenn. 2021) ("The loss of constitutional rights is presumed to constitute irreparable harm") (quotations omitted).

Harm to third parties from any injunction in this case is hard to determine. The city of course believes that enforcement of its ordinance will make Columbus safer. I have no evidence before me that might support or refute that view. In any event, though, even well-intended government regulations that a court determines are invalid or unconstitutional cannot remain in effect.

And, finally, the public-interest factor tilts in the plaintiffs' favor. See *Déjà Vu of Nashville, Inc. v. Metro. Govt. of Nashville & Davidson County, Tenn.*, 274 F.3d 377, 400 (6th Cir. 2001) ("it is always in the public interest to prevent violation of a party's constitutional rights") (quotations omitted).

In weighing any appropriate preliminary remedy, I am mindful, too, that the city has opted to forgo until July 1, 2023 its enforcement of the ban on large-capacity magazines. For now, no one faces prosecution under the city's ordinance. Keeping that status quo in place while this case is heard is an outcome consistent with the equitable nature of preliminary injunctions in general. See *Emanuel's LLC v. Restore Marietta,*

Inc., 206 N.E.3d 116, 2023-Ohio-147, ¶ 17 (4th Dist.) ("The goal of a preliminary injunction is to preserve the status quo pending final determination of the matter"); *Adams v. Baker*, 951 F.3d 428, 429 (6th Cir. 2020) ("The point of a preliminary injunction is to maintain the status quo until the resolution of the case on its merits") (quotations omitted).

For the reasons explained above, the plaintiffs' request for a preliminary injunction is granted. Defendant City of Columbus, as well as its officers, agents, representatives, employees, and the individual defendants, plus all other persons acting in concert with them or with knowledge of this order are enjoined, until further order of the court, from enforcing Columbus City Code §§ 2303.05(D), 2303.05(E), 2303.14(D), 2303.14(E), 2323.11(N), 2323.11(O), 2323.191, 2323.23(E), 2923.23(F), 2323.32, and 2323.321.

This order binds not only the defendants but also their agents, employees, law-enforcement officers, attorneys, and any other persons or entities in active concert with them who receive actual notice of this order whether by personal service or otherwise. The City of Columbus and the individual defendants are directed to notify their employees, agents, and any other persons associated or acting in concert with them about the terms of this order and to make their best efforts at all times to ensure that all those persons comply with the order.

I conclude that no bond from the plaintiffs is needed in this case, as I see no adverse financial consequences that the defendants are likely to suffer from any wrongful issuance of an injunction. See *Connor Group v. Raney*, 2016-Ohio-2959, ¶ 65 (2nd Dist.) ("the purpose of a bond is to assure relief to the enjoined party should that party eventually be vindicated"); *Vanguard Transp. Sys., Inc. v. Edwards Transfer &*

Storage Co., 109 Ohio App.3d 786, 793 (10th Dist. 1996) ("a court has the power to set the bond at nothing ($0.00)") (quotations omitted).

This preliminary injunction will therefore take effect immediately. It will remain in effect until it is dissolved or modified by me or until this case is resolved on the merits.

Any answer from the defendants to the amended complaint must be filed by May 12, 2023.

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.