

IN THE SUPREME COURT OF OHIO

CASE NO. 2024-0056

JOHN DOE 1, *et al.*
Plaintiffs-Appellees

-vs-

CITY OF COLUMBUS, *et al.*
Defendants-Appellants

**ON APPEAL FROM THE FIFTH DISTRICT COURT OF APPEALS
DELAWARE COUNTY, OHIO
CASE NO. 23CAE040028**

**BRIEF OF AMICUS CURIAE
OHIO COUNCIL OF CHURCHES IN SUPPORT OF DEFENDANTS-APPELLANTS,
CITY OF COLUMBUS, et al.**

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I. STATEMENT OF INTEREST AND INTRODUCTION

The Ohio Council of Churches is an ecumenical partnership of 18 national or international Christian denominations that carry out ministries through 24 distinct geographical configurations or judicatories in the state of Ohio. It is often described as a Jesus Christ movement for unity, justice, and peace. Its administrative offices are in the Capitol Square area of downtown Columbus.

The Ohio Council of Churches' executive director, the Rev. Dr. Jack Sullivan, Jr., is a surviving sibling of Jennifer Ann McCoy, who was shot to death in her Cleveland home in 1997.

Now celebrating nearly 105 years of ministry, the Ohio Council of Churches is one of the oldest of the state ecumenical councils in the United States. It is estimated that its 18 denominational bodies amass some 4,000 congregations and one million congregants. A distinctively Christian organization, the Ohio Council of Churches enjoys productive and meaningful relationships with people of other faiths, as well as with civic agencies and organizations.

Scores of Ohio Council of Churches-affiliated congregations operate ministries aimed at enhancing the faith and lives of congregants and community members of all ages, particularly children and/or youth. Below is a partial listing of Ohio Council of Churches-affiliated, Columbus congregations engaging in ministries with children and/or youth:¹

Northwest Christian Church (Disciples of Christ)
Woodland Christian Church (Disciples of Christ)
First Congregational United Church of Christ, Columbus
Trinity Episcopal Church
Saint Paul African Methodist Episcopal Church, Columbus
Saint John's United Church of Christ, Columbus
Northwest United Methodist Church, Columbus

¹ Other congregations with which the Ohio Council of Churches collaborates also conduct similar programs including, for example, First Church of God, Columbus.

United Methodist Church For All People, Columbus

Given the distinct role that many of its member congregations have in working with children on and off the premises of their facilities, the Ohio Council of Churches is especially concerned with unsupervised access to firearms by children and the risk such access presents to them and to others. Motivated by the love of God, the abundant and flourishing life vision of Jesus Christ, and concern for the safety and well-being of children, youth, and all congregants and community members, the Ohio Council of Churches has made gun violence prevention a top ministry priority.

The Ohio Council of Churches was encouraged by the Columbus City Council's 2023 action requiring gun owners to lock and safely store guns in their possession as a means of saving the lives of church and community children and youth who may access unlocked guns and unintentionally or even intentionally harm themselves and others.

Such access, which could be made possible through the lack of enforcement of Columbus gun lock laws, would lead to permanent and irreparable harm to the families of children and youth, their congregations, and their communities. This risk is surely and undeniably increased by any delay in enforcement that arises out of an inability to immediately appeal a preliminary injunction barring enforcement. No child should be allowed to die in the interim merely because the court system chose to delay its review of the law and the grant of the preliminary injunction barring enforcement. Moreover, Clergy and laity who have been entrusted and equipped to enhance lives would find themselves in the painful position of having to provide pastoral care to grieving and inconsolable families while presiding over funeral and memorial services marking the tragic end of the lives of children, youths, and adults whose deaths were the result of unprotected access to guns in their homes.

The fact that the risk of these horrific outcomes could be dramatically reduced through

the use of gun locks and safe storage devices is not only self-evident to the Ohio Council of Churches, it is supported by the experience of its members and by scientific research, as discussed further below. Thus, Amicus the Ohio Council of Churches strongly urges reversal of the decision of the Fifth District Court of Appeals.

II. STATEMENT OF FACTS/STATEMENT OF THE CASE

In the interests of brevity, OCC adopts the Statement of the Case of Appellants, City of Columbus as set forth in their Memorandum in Support of Jurisdiction filed June 11, 2024.

III. LAW AND ARGUMENT

Proposition of Law No. 2: An order enjoining enforcement of a statute or ordinance causes irreparable harm to the sovereign interests of the government, and is immediately appealable

1. A preliminary-injunction order may be immediately appealable under R.C. 2505.02(B)(4) even if the complaint seeks a permanent injunction

a. The Potential for Death of Child That Is likely to Result From a Preliminary Injunction That Prevents Enforcement of a “Safe Storage” Ordinance, Is An Irreparable Harm That Threatens All the Citizens of Ohio, Requiring That Such an Injunction Be Immediately Appealable

Amicus Curiae, the Ohio Council of Churches (“OCC”), seeks to offer its unique perspective on the issue of irreparable harm that will arise from an order enjoining enforcement of these ordinances. OCC’s pastors are essentially the emotional and religious “First Responders,” called upon to minister to the families suffering the tragic losses due to gun violence. They see first-hand the terrible cost and pain visited on these families. These OCC ministers, also bear the terrible emotional cost of dealing with such tragedies, and seeing the toll it exacts on their parishioners. **These are permanent and irreparable harms** — but ones that can often be prevented by the simple expedient of a locking device.

Moreover, it is often not necessarily even the child who takes the unsecured weapon from

home who may be injured physically, but rather others who have the misfortune to be within their vicinity when it is discharged either on purpose or by accident. Thus, the risk is not one even necessarily borne by the owner of the gun (who may cavalierly be willing to take such a chance with his or her own family), but rather by those who are placed into harm's way by simply being in the vicinity of the child with the gun when it fires. And even if the user is not physically injured, they too bear the psychological injury forever associated with injuring or killing others (often a sibling or a friend), if not the criminal penalty.

Simply put, these ordinances are directed to saving lives based upon their particularized subject matter while imposing minimal, if any burden on the exercise of any asserted right to bear arms. First and foremost is the Columbus Codified Ordinance 2323.191, prohibiting “negligent storage of a firearm” at a person’s residence when the person “knows or reasonably should know a minor is able to gain access to [it].” This provision includes a safe harbor for persons who keep firearms in “safe storage,” as defined in the ordinance. Section 2323.11(O). Its clearly intended purpose is to protect children from inadvertent access to a deadly weapon. While there are certainly other salutary, life-saving benefits, such as hindering suicide and preventing the theft of weapons from the actual owner, there certainly can be no greater concern than saving the lives of our children.

Moreover, it is not only the life of the child who gains access to the firearm that is placed in extreme jeopardy, but invariably *other* children with whom they play, who have the unfortunate happenstance of simply being around them when the gun goes off. The owners of such weapons may argue some sort of entitlement to determine how best such firearms are to be stored with respect to the safety of their *own* families and children, but it is the harm that may befall *other* families and their children that this ordinance addresses. The families of potential

victims have no means to protect themselves and their children from a bullet fired by a child with a gun that was not properly secured short of locking up their own children, and that is certainly no solution. Parents should not be forced to bear the risk of death – the greatest irreparable harm – from an unsecured weapon while the enforcement of the law is held in limbo during the pendency of a preliminary injunction that awaits a final trial. That risk remains, one which the citizens of the state of Ohio – parents and children – are forced to unfairly bear while the matter is litigated. The onerous burden imposed is even more unfair given the minimal burden placed on firearms owners by calling upon them to safely secure their weapons in the meantime. It is a balancing test which this Court should recognize can only have one objective and reasonable resolution: availability of immediate review to assure that no child dies due to a lack of enforcement of the ordinance while the injunction wends its way through the courts.

b. It Is Likely That a Child Will Die or Be Seriously Injured During the Time That a Preliminary Injunction Preventing Enforcement of the Ordinance is in Place

According to Webster, et al, *Youth Acquisition and Carrying of Firearms in the United States: Patterns, Consequences, and Strategies For Prevention*, Center for Gun Policy and Research Center for the Prevention of Youth Violence, Johns Hopkins Bloomberg School of Public Health, National Academies Press (Sept. 2015):²

Firearms used in teen suicides and unintentional shootings tend to come from their own home, a home a relative or friend. From 1999 through 2010, more than 10,000 teenagers and younger children in the U.S. committed suicide with a firearm and nearly 1,900 died from unintentional shootings, a total of nearly 1,000 deaths per year. During the past decade, there have been 3,000 to 5,000 incidents of teens and children suffering nonfatal gunshots from unintentional shootings and suicide attempts. Among adolescents and young adults, access to a firearm greatly increases the risk of suicide, as well as unintentional firearm deaths.

² chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://nap.nationalacademies.org/resource/21814/Youth-Acquisition-Carrying-Firearms-US.pdf

Leaving guns loaded and unlocked further increases children's and adolescents' risk of unintentional shootings and suicide.

Id. at 6-7 (emphasis added)(footnotes omitted). Moreover, “Youths carrying handguns outside the home poses greater risks that altercations and interpersonal conflicts involving youth result in lethal outcomes.” *Id.* at 8. It was further found that:

Failure to keep guns locked up securely leads to many suicides and unintentional shootings involving children and adolescents while also enabling criminals to steal guns that are later used to commit violent crimes. Keeping firearms locked up has been shown to lower the risk of unintentional and self-inflicted gunshot wounds to underage youth. **Laws requiring gun owners to store firearms locked and inaccessible to children have been shown to decrease suicides and deaths due to accidental shootings.** A significant challenge to promoting safe gun storage, particularly to protect teens, is that gun owners often have unrealistic expectations of children's and adolescents' ability to always follow rules for safe handling and under-appreciate risks such as adolescent suicide. Many gun owners feel that they can “gun proof” their children through education, **yet controlled studies suggest that children and even teens cannot resist the lure of handling guns in unsafe ways when unsupervised.**

Id. at 20-21 (footnotes omitted). See also Grossman, et al, *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, JAMA (2005); 293:707-714 (“The 4 practices of keeping a gun locked, unloaded, storing ammunition locked, and in a separate location are each associated with a protective effect and suggest a feasible strategy to reduce these types of injuries in homes with children and teenagers where guns are stored.”).

Grossman, et al., *Self-Inflicted and Unintentional Firearm Injuries Among Children and Adolescents: The Source of The Firearm*, Archives of Pediatrics & Adolescent Medicine (Aug. 1999), reported a study in Kings County, Washington, analyzing County medical examiner records, regional police investigative reports, medical records from a level I trauma center, and surveys of victims' families, which found:

Fifty-six fatal injuries and 68 nonfatal firearm injuries that met the criteria were identified. Of these, 59 were intentionally self-inflicted deaths and injuries and 65 were unintentional deaths and injuries. A firearm owned by a household member living with the victim was used in 33 (65%) of 51 suicides and suicide attempts

and 11 (23%) of 47 unintentional injuries and deaths. Additionally, a firearm owned by another relative, friend, or parent of a friend of the victim was used in 4 (8%) of the 51 suicides and suicide attempts and 23 (49%) of the 47 unintentional injuries and deaths. Parental ownership accounted for 29 (57%) of the 51 suicides and suicide attempts and 9 (19%) of the 47 unintentional injuries and deaths. More than 75% of the guns used in suicide attempts and unintentional injuries were stored in the residence of the victim, a relative, or a friend.³

The study concluded: “Most guns involved in self-inflicted and unintentional firearm injuries originate either from the victim's home or the home of a friend or relative.”⁴

Based upon the foregoing, an unsecured firearm in a home in which there are children presents a material risk of injury to those children or to other children they encounter. That is what the research shows, and it is also common sense. And where that risk materializes in the death or serious injury to a child, there truly can be no greater irreparable injury, not only to the child, but to their parents, their siblings, their entire family and the community as whole.

c. OCC Congregations and Their Members and Families Are Put at Risk of This Irreparable Harm by the Preliminary Injunction that Prevents the Enforcement of Safe Storage Provisions, Which Risk is Heightened Based on an Inability to Pursue an Immediate Appeal

OCC is an organization dedicated to meeting the educational and spiritual needs of its members, and particularly those of its members’ children, statewide. Virtually all of its member congregations maintain educational programs, daycare programs and a host of activities directed to the healthy growth and development of their congregants’ children. This includes providing access to the member-congregations’ facilities, both indoor and out, whether they are sanctuaries, assembly halls, classrooms, playgrounds or daycare facilities. Thus, the Ohio Council of Churches has an abiding interest and perspective on the need to prevent any child from gaining access to a deadly firearm and discharging it either intentionally or inadvertently at

³ <https://jamanetwork.com/journals/jamapediatrics/fullarticle/347593>

⁴ *Id.*

or near any houses of worship. This concern could not be more obvious, recognizing the devastating harm caused by the death or serious injury to a child, and the horrific, permanent injury visited upon their families forever afterwards.

d. The Potential Risk of Death of a Child is an Irreparable Harm That Requires Immediate Access to an Appeal to Challenge a Preliminary Injunction That Otherwise Prevents Enforcement of an Ordinance That Would Reduce or Eliminate That Risk

The potential for death has long been recognized as an irreparable harm that demands immediate appellate review. And there can be no greater or more irreparable harm than the death of or serious injury to a child. Of course, preliminary injunctions are invoked as a means to *prevent* irreparable harm, particularly death. For example, in *In Re Ohio Execution Protocol Litigation*, S.D. Ohio E. Div. No. 2:11-cv-1016, 2017 U.S. Dist. LEXIS 182406 (Nov. 3, 2017), *22-23, the court recognized:

The purpose of a preliminary injunction is to preserve a court's power to render a meaningful decision after a trial on the merits. *Alabama v. U.S. Army Corps of Engineers*, 424 F. 3d 1117, 1128 (11th Cir. 2005), quoting Wright, Miller & Kane, Federal Practice and Procedure: Civil, § 2946.

Although the fundamental fairness of preventing irremediable harm to a party is an important factor on a preliminary-injunction application, the most compelling reason in favor of entering a *Rule 65(a)* order is the need to prevent the judicial process from being rendered futile by defendant's action or refusal to act. . . . [T]he preliminary injunction is appropriate whenever the policy of preserving the court's power to decide the case effectively outweighs the risk of imposing an interim restraint before it has done so.

Id. at § 2947.

Failure to enjoin an imminently pending execution will obviously render the case moot as to that inmate long before any trial can be held. As noted above, there has never been a trial in this case; Plaintiffs who failed to obtain preliminary injunctive relief have had their cases rendered moot by their executions.

In Re Ohio Execution Protocol Litigation, *supra*, *22-23.

In the case sub judice, *it is the preliminary injunction that will give rise to the irreparable*

harm, in that the deaths or serious harms that are likely to ensue due to an inability to enforce the safe storage ordinance defy any meaningful recourse from a subsequent trial that occurs only after the harms have been visited upon these children and their families.

Such a loss is irreparable. As the Poet said in part:

He wiped away the snow
And laid down a single rose.
Thinking of what might have been,
And pain only the bereaved knows.

Another tear falls in a garden of stone.....

He could have been president,
A ballplayer or won a Nobel prize.
But it'll never come to be,
And we'll never look into his eyes

Garden Of Stone by Michael Kaner.⁵

The OCC is uniquely situated to offer insight into these losses because its member clergy are the people actually called upon to minister to the victims and their families following these horrific events. It is a profound yet painful duty of the clergy to serve as emotional first-responders, called upon to try and heal the unhealable wounds that a family endures from the death or injury to a child caused by a firearm.

This terrible and irreparable harm that arises from these incidents is reflected in the experience of the member clergy of the Ohio Council of Churches. None may be more reflective of this than the experience of Rev. Dr. Susan K. Smith. By means of her attached Affidavit,⁶ she relates the following harrowing events with which she was confronted:

1. I share an experience that happened some years ago that still haunts me. I got a call from a mother asking me to please come to her house. Her voice

⁵ See <https://funeralguide.co.za/child-loss-poems/>

⁶ See affidavit of Rev. Dr. Susan K. Smith, Exhibit A, Appendix.

was quiet and I detected a quiver, but had no idea what was going on. The sound of her voice told me I should just go.

2. When I got to her house, she was sitting in the middle of the floor, next to her dead child. He was 3 years old. Standing nearby was his brother, who was 5, and between the dead child and the one who stood nearby was a gun.
3. The 5-year-old had found the gun and was playing with it when it went off, instantly killing his 3-year old brother.
4. The mother was in a trance. She kept rocking back and forth, whispering her child's name, telling him to wake up. The 5- year old stood frozen.
5. The police came and took the dead child. They asked the mother some questions and she shared as much as she was able before completely breaking down. The five-year-old was still standing, now looking scared. When an officer walked toward him, he screamed out, "I didn't mean to!" And once he said that, he kept saying it over and over, crying the whole time. He could not be quieted or calmed.
6. That family never rebounded from this tragedy. Their family trauma followed them. The mother wondered aloud for years why God had not stopped this horrible event from happening. After some months, she stopped coming to church. Her 5-year-old continued to sink into a depression from which he never emerged. He eventually committed suicide.

Id. She further attested:

10. The mother eventually returned to church, but, in her own words, "...stayed as far away from God as possible." When I suggested that it was not God, but the love of guns this society has as the source of her pain, she shrugged. In her mind, God had failed her family because God had been unable to use politicians to enact some kind of gun control.
11. When I saw her recently, she told me, "You never get over this. Both of my babies are gone because of a gun. I'm never going to get past that."
12. Based upon this experience, it is evident that firearms that are not safely stored can be and are used by children in the household with catastrophic results. It results in irreparable harm not only to the child victim, but also to the child discharging the gun, their family, and even to those of us who are called upon to minister to them. There can be no greater loss, and as seen, it is one that cannot be rectified or undone, nor does the pain abate over time.

Id.

Rev. Dr. Amariah McIntosh, is a pastor in the Christian Methodist Episcopal (CME) Church, who has served congregations in Kentucky, Indiana, and Ohio over the past thirty two years.⁷ As she attests in her Affidavit, deaths and funerals are part of pastoral responsibilities and she has ministered to many families during her time as a pastor. In discussing the death of a 16 year old granddaughter of her associate minister, Rev. McIntosh has been forced to face the permanent loss associated with the death of a young person due to firearms:

8. ...I had the difficult challenge of comforting a family and helping with funeral arrangements. Despite her own grief, the grandmother chose to provide the words of comfort to the family. My heart broke as I visited with the young lady's mother, because I have discovered in my years of ministry that finding the right words to say to a grieving family can be elusive in times like these.
9. The world has been deprived these years of the gifts, talents, and graces that these young people could have provided had they been allowed to live. Their families are still devastated by their losses, for their absences are still deeply felt.
10. Gun violence is a community health threat and whatever the legislature, community, and law enforcement can do to help end it will a welcome relief especially to families and clergy who have to deal with its lasting effects every day.

Id.

Robert Grow, a Chaplain with Ohio Living Home Health and Hospice, similarly had to minister to a mother who was confronted by the death of her two children due to a household firearm. He relates the following events⁸:

3. In a five-year span of my career as a pastor and chaplain, I have had to minister to seven families whose children were killed with guns. This includes families who were rich and poor; rural, urban, and suburban; black and white. Any death of a child is horrendous and those involving

⁷ See Affidavit of Rev. Dr. Amariah McIntosh, Exhibit B, Appendix

⁸ See Affidavit of Chaplain Robert Grow, Exhibit C, Appendix

gun violence, even more so. There is one I wish to share that stands out in particular.

4. I was working on my residency at St. Vincent Mercy Medical Center in Toledo, Ohio, and was the in-house chaplain on a particular weekend in the spring of 2006. I was paged to the emergency room because a case was coming into the hospital where a man had stabbed his wife. When the emergency services arrived, they were told that the man had a gun. He shot a sheriff's deputy in the arm and he then took his two elementary school age children hostage. I waited with the family of the woman while she was in surgery. While she was in surgery the husband shot both his elementary school age son and daughter dead and then took his own life with his gun. I had to go in with the family and tell the woman that she had lost both of her children. When she woke up from surgery, we told her what happened. There was not a dry eye in the room, including my own. It was the day before Mothers' Day. That event, the impact on the mother losing both of her children to gun violence, and the effect on me have never left me.
5. I have endured secondary and tertiary vicarious trauma from my ministry to the aforementioned families. While it was my calling to minister to families experiencing such terrible losses, the hurt and pain that it has caused me is also profound. The potential for the death of children due to access to firearms is the greatest and most terrible risk a society can contemplate. It is an irreparable harm.

Id.

As these clergy members indicate, the loss due to the death of a child is one that does not abate, either for the families who experience the loss, nor even for the clergy who minister to them. And the impact on the community is just as palpable from the loss of those who will never have the opportunity to grow up, go to school, fall in love, marry, have children, have careers, grow old and contribute to the well-being of world in which we live.

No family should be forced to endure the unendurable loss of a child when a simple, and sensible expedient can prevent it — and one which works no hardship on the exercise of the rights of others. But more importantly, such a loss should not even be hazarded merely because immediate review of the law in question is delayed on the mistaken belief that a preliminary injunction maintains the status quo until a full and final trial can be held on the law in question.

In fact, preventing an immediate appeal would be the antithesis of maintaining the status quo, visiting upon the victims of any ensuing injury an irreparable harm — and one that could have been easily prevented.

The test purportedly applied in the trial court in this matter was the “four factor test,” wherein the trial court stated:

("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 plaintiffs 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).

Doe v. City of Columbus, Delaware C.P No. 23 CV H 02 0089, Judgement Entry (Jan. 11, 2024), p. 27 (emphasis added).

It is this third element and the manner in which it was applied — or more accurately not applied — that is the concern of Amicus. While the trial court expressly recognized that these factors must be considered and “balanced,” it utterly failed to engage in any such effort with respect to the third factor in particular. Its consideration of this critical issue — the impact that the injunction would have upon the community — is virtually non-existent. It was confined to the following passage:

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.

Id. at 28.

The trial courts' essential failure to consider this factor is even more glaring in that it was incumbent upon the Plaintiffs seeking the injunction to establish their right to it by clear and convincing evidence: "It is well established that "the right to an injunction must be clear and the proof thereof *clear and convincing* * * *." *White v. Long* (1967), 12 Ohio App.2d 136, 140, 41 O.O.2d 200, 202, 231 N.E.2d 337, 340; *S. Ohio Bank v. S. Ohio Savings Assn.* (1976), 51 Ohio App.2d 67, 69, 5 O.O.3d 183, 184, 366 N.E.2d 296, 298." *Rite Aid v. Marc's Variety Store*, 93 Ohio App. 3d 407, 412, 638 N.E.2d 1056 (8th Dist. 1994)(emphasis added). Moreover, under the third factor, it has further been stated that the *plaintiff applicant* must establish "The harm to plaintiff if the injunction does not issue *clearly outweighs* the harm which the injunction would do to the defendants and innocent third parties;" *Rite Aid v. Marc's Variety Store, supra*, at 412 (emphasis added). The court in *Rite Aid* further declared when analyzing this factor, under the "comparative injury or balance of inconvenience rule," Ohio courts deny permanent injunctive relief where it would cause more harm that it would avoid or result in the impairment of an important public interest. *White v. Long* (1967), 12 Ohio App.2d 136, 140, 41 O.O.2d 200, 203, 231 N.E.2d 337, 340 (reversing injunction which adversely affected the public interest in the continued operation of a sewage facility); *United States Bung Mfg. Co. v. Cincinnati* (1943), 73 Ohio App. 80, 88-89, 28 O.O. 121, 124-125, 54 N.E.2d 432, 435 (dismissing action for injunction which would prevent construction of a flood wall)." *Rite Aid v. Marc's Variety Store, supra*, at 417.

Thus, despite this obligation to consider the harm that would be visited upon others from the granting of the injunction, the trial court, in ostrich-like fashion, completely ignored even the most obvious salutary and tangible benefits associated with this ordinance: preserving the life of

children, when comparing it to an alleged de minimis intrusion on the rights of gun owners to leave their firearms unsecured in the presence of children. And it is also obvious that when analyzing this factor and finding in favor of the Plaintiffs, it was not decided based upon a clear and convincing evidentiary standard.

This analysis by the trial court would sacrifice the lives of children (and not even necessarily those of the gun owners, but rather the lives of other children who have the unhappy misfortune of playing with the gunowner's children and end up dead, maimed or otherwise seriously wounded, when the gun is discharged), and claim to balance this harm against a theoretical, de minimis burden from safely storing a gun. That purported analysis was tantamount to no analysis and constituted a complete absence of a balancing of these factors. There can be no doubt that it is the families of the victims who the trial court expected to pay the true price of non-enforcement of the ordinance. Where the stakes of enjoining enforcement of an ordinance involve something trivial, then a delay in appellate review might be deemed acceptable. But where such a delay risks the death of children – as it surely does based upon the foregoing – no appellate review can be soon enough.

Certainly, where there is an obligation by a court to consider the impact of the preliminary injunction it is considering upon the community at large, where the price of that injunction is or may be the death of children, and the court utterly fails to engage in any such consideration, the need for immediate appeal is more than acute, it is of the highest priority. No family should have to bear the cost that ensues from delaying enforcement of an ordinance that might save them from the greatest loss possible: the loss of their child, their purpose, their future.

IV. CONCLUSION

Accordingly, OCC urges the Court to reverse the order of the Fifth District Court of Appeals.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that the foregoing was filed via the Court’s electronic filing system and served via electronic mail, this 11th day of June, 2024, upon:

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IN THE SUPREME COURT OF OHIO

CASE NO. 2024-0056

JOHN DOE 1, *et al.*
Plaintiffs-Appellees

-vs-

CITY OF COLUMBUS, *et al.*
Defendants-Appellants

ON APPEAL FROM THE FIFTH DISTRICT COURT OF APPEALS
DELAWARE COUNTY, OHIO
CASE NO. 23CAE040028

APPENDIX

**BRIEF OF AMICUS CURIAE
OHIO COUNCIL OF CHURCHES IN SUPPORT OF DEFENDANTS-APPELLANTS,
CITY OF COLUMBUS, *et al.***

APPENDIX

Exhibit A - Affidavit of Rev. Dr. Susan K. Smith

Exhibit B - Affidavit of Rev. Dr. Amariah McIntosh

Exhibit C - Affidavit of Chaplain Robert Grow

EXHIBIT A

AFFIDAVIT OF REV. DR. SUSAN K. SMITH

STATE OF OHIO)
)
COUNTY OF FRANKLIN) SS:

After first being duly cautioned and sworn, Rev. Dr. Susan K. Smith states the following:

1. I am an adult and have personal knowledge of the matters set forth herein.
2. I graduated from Occidental College in Los Angeles (graduated 1976), Yale Divinity School (graduated 1986), and received a Doctor of Ministry Degree from United Theological Seminary in 1998.
3. I am an ordained minister in the United Church of Christ (1987) and was the pastor of Advent UCC for 22 years, from 1990 to 2012. I am currently the founder/pastor of Crazy Faith Ministries, and am also employed full time as the Director of the Office of Clergy and Lay Leadership Resource Development for the Samuel DeWitt Proctor Conference, Inc., Chicago, Illinois.
4. It is hard to put into words the depth of the pain I have seen as a pastor in parents who have lost children due to having been shot.
5. I share an experience that happened some years ago that still haunts me. I got a call from a mother asking me to please come to her house. Her voice was quiet and I detected a quiver, but had no idea what was going on. The sound of her voice told me I should just go.
6. When I got to her house, she was sitting in the middle of the floor, next to her dead child. He was 3 years old. Standing nearby was his brother, who was 5, and between the dead child and the one who stood nearby was a gun.
7. The 5-year-old had found the gun and was playing with it when it went off, instantly killing his 3-year old brother.
8. The mother was in a trance. She kept rocking back and forth, whispering her child's name, telling him to wake up. The 5- year old stood frozen.
9. The police came and took the dead child. They asked the mother some questions and she shared as much as she was able before completely breaking down. The five-year-old was still standing, now looking scared. When an officer walked toward him, he screamed out, "I didn't mean to!" And once he said that, he kept saying it over and over, crying the whole time. He could not be quieted or calmed.
10. That family never rebounded from this tragedy. Their family trauma followed them. The mother wondered aloud for years why God had not stopped this horrible event from

happening. After some months, she stopped coming to church. Her 5-year-old continued to sink into a depression from which he never emerged. He eventually committed suicide.

11. Had there been a requirement for there to be gun locks, this story could have been dramatically different. Both those little boys would probably be alive today, able to tell the story about how they “got in trouble” when they were little for playing with daddy’s gun – but their ability to recount the story would be evidence that certain simple precautions taken to protect one’s family from a tragic accident were the reason the two children were alive to tell the story! Sadly, that was not to be for this family because of the failure to safely secure a firearm in a home with children.
12. The mother eventually returned to church, but, in her own words, “...stayed as far away from God as possible.” When I suggested that it was not God, but the love of guns this society has as the source of her pain, she shrugged. In her mind, God had failed her family because God had been unable to use politicians to enact some kind of gun control.
13. When I saw her recently, she told me, “You never get over this. Both of my babies are gone because of a gun. I’m never going to get past that.”
14. Based upon this experience, it is evident that firearms that are not safely stored can be and are used by children in the household with catastrophic results. It results in irreparable harm not only to the child victim, but also to the child discharging the gun, their family, and even to those of us who are called upon to minister to them. There can be no greater loss, and as seen, it is one that cannot be rectified or undone, nor does the pain abate over time.
15. With that memory hovering over me, I believe that the simple expedient of legally requiring safe storage of firearms around children can be enacted, consistent with Second Amendment rights, but while also providing a tool to protect families from tragedies like the one I described. Being required to comply with a safe storage ordinance is not disruptive of a gun-owner’s rights, but, rather, promotes peace and reassurance that this kind of tragedy will be prevented from happening again.

Further Affiant sayeth naught.

Susan K Smith

Rev. Dr. Susan K. Smith

Sworn to and subscribed to before me this 9th day of June, 2024.



BRANDON J CAMPBELL
Notary Public, State of Ohio
My Commission Expires
December 12, 2028

[Signature]
Notary Public

EXHIBIT B

AFFIDAVIT OF REV. DR. AMARIAH MCINTOSH

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

After first being duly cautioned and sworn, Rev. Dr. Amariah McIntosh states the following:

1. I am an adult and have personal knowledge of the matters set forth herein.
2. I am a pastor in the Christian Methodist Episcopal (CME) Church, having served congregations in Kentucky, Indiana, and Ohio over the past thirty two years. Deaths and funerals are part of pastoral responsibilities and I have ministered to many families during my time as a pastor.
3. Every death is a challenge because each circumstance has its uniqueness. It is one thing to minister to families who experience death due to illness, natural causes, or accidents. It is quite another when a family has to deal with the death of a loved one due to gun violence, especially the death of a child.
4. I'd like to share particular experiences that are part of my time as an Ohio pastor and also of a personal nature.
5. My first experience with gun violence was while I lived in Indianapolis, Indiana. My 19 year old godson was gunned down. My godson's life ended before it began because of someone having access to a gun and deciding to use it. This death affected me personally because I knew the young man since he was a toddler and I felt as sorrowful as his parents who had to bury a child. We were grateful for the support of our respective church community that was a source of strength and comfort during that time.
6. Gun violence, as I have learned does not affect only the victim's family, but the shooter's family as well. Due to this event, two young people who could have been a great help to families and community, instead were denied the opportunity to live productive lives.
7. My next experience with gun violence happened in Youngstown, OH. A young man whose family belonged to the church I pastored was found shot to death on the street. His death was devastating to his family. Not only did I have to comfort the family, but as their pastor, I also had to assist with planning and officiating the funeral. I found it extremely difficult to find the words to say, but I was able to provide a measure of comfort to the family during their time of grief.
8. The final experience I wish to share also happened during my pastorate in Youngstown. The 16 year old granddaughter of my associate minister was shot to death by a boyfriend while she was babysitting a young family member. That little girl witnessed her cousin's murder. Once again, I had the difficult challenge of comforting a family and helping with funeral arrangements. Despite her own grief, the grandmother chose to provide the words

of comfort to the family. My heart broke as I visited with the young lady's mother, because I have discovered in my years of ministry that finding the right words to say to a grieving family can be elusive in times like these.

9. The world has been deprived these years of the gifts, talents, and graces that these young people could have provided had they been allowed to live. Their families are still devastated by their losses, for their absences are still deeply felt.
10. Gun violence is a community health threat and whatever the legislature, community, and law enforcement can do to help end it will a welcome relief especially to families and clergy who have to deal with its lasting effects every day.

Further Affiant sayeth naught.


Rev. Dr. Amariah McIntosh

Sworn to and subscribed to before me this 6th day of June, 2024.


Shannon Osborn
Notary Public, State of Ohio
My Commission Expires 10-08-2027


Notary Public

EXHIBIT C

AFFIDAVIT OF ROBERT GROW

STATE OF OHIO

)
)
)

SS: 297 724911

COUNTY OF Summit

After first being duly cautioned and sworn, Robert Grow states the following:

1. I am an adult and have personal knowledge of the matters set forth herein.
2. I am a chaplain with Ohio Living Home Health and Hospice. I am a member of Brecksville United Church of Christ. I am a member in discernment seeking ordination in my denomination and employment with Grace at Loyal Oak United Church of Christ as their designated pastor.
3. In a five-year span of my career as a pastor and chaplain, I have had to minister to seven families whose children were killed with guns. This includes families who were rich and poor; rural, urban, and suburban; black and white. Any death of a child is horrendous and those involving gun violence, even more so. There is one I wish to share that stands out in particular.
4. I was working on my residency at St. Vincent Mercy Medical Center in Toledo, Ohio, and was the in-house chaplain on a particular weekend in the spring of 2006. I was paged to the emergency room because a case was coming into the hospital where a man had stabbed his wife. When the emergency services arrived, they were told that the man had a gun. He shot a sheriff's deputy in the arm and he then took his two elementary school age children hostage. I waited with the family of the woman while she was in surgery. While she was in surgery the husband shot both his elementary school age son and daughter dead and then took his own life with his gun. I had to go in with the family and tell the woman that she had lost both of her children. When she woke up from surgery, we told her what happened. There was not a dry eye in the room, including my own. It was the day before Mothers' Day. That event, the impact on the mother losing both of her children to gun violence, and the effect on me have never left me.
5. I have endured secondary and tertiary vicarious trauma from my ministry to the aforementioned families. While it was my calling to minister to families experiencing such terrible losses, the hurt and pain that it has caused me is also profound. The potential for the death of children due to access to firearms is the greatest and most terrible risk a society can contemplate. It is an irreparable harm. It is also the greatest denial of the most fundamental constitutional right, the right to life. It well outweighs any purported right one might assert to leave an unsecured firearm where a child may access it and cause harm to themselves or others.

Further Affiant sayeth naught.

Robert Grow

Robert Grow

Sworn to and subscribed to before me this 7 day of June, 2024.



Darcy Lorius

Notary Public