IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Ezell et al

Plaintiff(s),

v.

City of Chicago

Defendant(s).

Case No. 10 c 5135
Judge Virginia M. Kendall

ORDER

Defendant City of Chicago's motion to stay ruling pending appeal [286] is granted.

STATEMENT

Before the Court is the Defendant City of Chicago's motion for a stay of judgment pending appeal. The Court decided the City's and the Plaintiffs' cross-motions for summary judgment and entered judgment on September 29, 2014, *see* Dkt. Nos. 280-81; *Ezell v. City of Chicago*, No. 10 C 5135, 2014 WL 4813419 (N.D. Ill. Sept. 29, 2014). In that ruling, the Court held that two challenged regulations of the Chicago Municipal Code concerning the available locations and operating hours of potential firing ranges in Chicago were unconstitutional, thereby precluding the City from enforcing the provisions. The Court found that the nine remaining challenged provisions survived judicial review. On October 20, 2014, the City appealed the Court's adverse rulings (Dkt. No. 285) while the Plaintiffs cross-appealed on October 21, 2014 (Dkt. No. 291). The City now moves for a stay of the Court's judgment pending appeal. Due to the novelty of the issues presented to the Court, the fact that both parties appealed the Court's ruling, and for the reasons set forth below, the Court grants the City's motion to stay.

Federal Rule of Civil Procedure 62(c) grants this Court the authority to suspend, modify, restore, or grant an injunction "while an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies [the] injunction." Fed. R. Civ. P. 62(c). The Court's decision whether or not to stay the injunction pending appeal is a discretionary one. *See, e.g., Chao v. Current Dev. Corp.*, No. 03 C 1792, 2008 WL 4681976, at *3 (N.D. Ill. May 2, 2008); *Duthie v. Matria Healthcare, Inc.*, 543 F. Supp.2d 958, 960 (N.D. Ill. 2008). District courts should ordinarily only take action pursuant to Rule 62(c) in an effort to maintain the *status quo* of the parties pending the outcome of the appeal. *See Basicomputer Corp. v. Scott*, 973 F.2d 507, 513 (6th Cir. 1992); *Ortho Pharm. Corp. v. Amgen, Inc.*, 887 F.2d 460, 464 (3d Cir. 1989). "[A] party who chooses to appeal but who fails to obtain a stay . . . pending appeal, risks losing its ability to realize the benefits of the successful appeal." *Duncan v. Farm Credit Bank of St. Louis*, 940 F.2d 1099, 1103 (7th Cir. 1991) (internal citation and quotation marks omitted). When determining whether or not to issue a stay of an injunction pending an appeal, courts consider the following factors: (1) whether the appellant has shown a likelihood of success on appeal; (2)

whether the appellant has demonstrated a likelihood of irreparable harm if a stay is not granted; (3) whether a stay would substantially harm other parties to the litigation; and (4) the public interest. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). When weighing the factors, the Court "seek[s] at all times to 'minimize the costs of being mistaken.' " *See Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 12 (7th Cir. 1992).

Here, the factors weigh in favor of a stay. With respect to the City's likelihood of success on appeal, although the Court stands by its rulings and believes them to be correct, it recognizes that the constitutional issues presented by the parties' cross-motions for summary judgment were novel and unsettled. *See, e.g., United States v. Articles of Drug, Promise Toothhpaste for Sensitive Teeth*, No. 83 C 6129, 1986 WL 5185, at *1 (N.D. Ill. Apr. 25, 1986) (the novelty or difficulty of an issue may be properly considered when estimating an appellant's likelihood of success on appeal); *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 844-45 (D.C. Cir. 1977). Few decisions have addressed the constraints of the Second Amendment and there was no controlling precedent governing the precise situation presented to this Court. Accordingly, even though the City's reasons for believing it has a substantial likelihood of success on the appeal are the very same reasons this Court considered and rejected, the novelty of the issues favors a stay.

Similarly, the other factors also weigh in favor of a stay of the Court's judgment. Although the Plaintiffs argue that a stay would cause them significant injury, they have not stated that any individual has already begun to construct a firing range and they neglect to realize that a stay may benefit them as well. Were construction of a firing range to begin outside a manufacturing district and the Court's ruling subsequently reversed on that issue, both the City and the range constructor would be severely injured. Inversely, if the Seventh Circuit were to reverse any of the Court's rulings upholding the City's regulations regarding construction requirements, a stay would prevent the Plaintiffs and potential builders of ranges from bearing any unnecessary costs. The Court's conclusion is bolstered by the fact that the Plaintiffs cross-appealed the rulings in the City's favor. Because the Rule 62(c) factors suggest that a stay is appropriate, the Court grants the City's motion.

Date: 1/29/2015

Virginia M. Kendall
United States District Judge