

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

MICHAEL E. MANN, PH.D.,	)	
	)	
Plaintiff,	)	Case No 2012 CA 008263 B
	)	Judge Alfred S. Irving, Jr.
v.	)	
	)	
NATIONAL REVIEW, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**PLAINTIFF’S MOTION FOR STAY OF AMENDED ORDER  
GRANTING IN PART NATIONAL REVIEW INC.’S MOTION FOR  
ATTORNEYS’ FEES AND SUPPLEMENTAL MOTION FOR FEES ON FEES**

Plaintiff, Michael E. Mann, Ph.D. (“Dr. Mann”), by and through his undersigned counsel, respectfully moves for a stay without bond of the January 7, 2025 Amended Order Granting in Part National Review Inc.’s Motion for Attorneys’ Fees and Supplemental Motion for Fees on Fees (“Amended Order on Fees”), and a stay of any proceedings to reduce that order to judgment and/or execute same, pending the outcome of his appeal which has been filed contemporaneously herewith. An automatic stay has been in effect for the past 30 days, but Dr. Mann requests a further stay by this Court pursuant to D.C. Superior Court Civil Rule 62 and this Court’s inherent power.

**INTRODUCTION**

On January 7, 2025, the Court entered an award of \$530,820.21 against Dr. Mann for attorneys’ fees and costs pursuant to District of Columbia Strategic Lawsuits Against Public Participation Act, D.C. Code §16-5501, *et seq.* (“Anti-SLAPP Act”) and D.C. Superior Court Civil Rule 54(d). *See generally* Amended Order on Fees. Prior to this order against him, Dr. Mann prevailed on his jury trial against the defendants Rand Simberg and Mark Steyn, and the jury awarded him \$1,001,002.00 in damages for defamatory writings published on the defendants’

Competitive Enterprise Institute’s (CEI’s) and National Review Inc.’s (NRO’s) websites. *See* February 9, 2024 Final Judgment Order.

Dr. Mann has appealed the Amended Order on Fees and should be granted a stay pending the appeal without bond because of the unusual circumstances surrounding this case. The validity of the Anti-SLAPP Act as a whole is currently on appeal before the Court of Appeals in another case, and a decision on that issue will apply to the Amended Order on Fees. Further, Dr. Mann’s ability to pay today will be the same following the outcome of his appeals in this case, rendering security unnecessary.

### **LEGAL STANDARD AND ARGUMENT**

Courts have interpreted Rule 62(d) that allows a movant a stay of a judgment by posting a supersedeas bond as permissive. Posting a bond gives the appellant a “stay as a matter of right,” but is not the only instance in which the court can grant a stay. *Fed. Prescription Serv., Inc. v. Am. Pharm. Ass’n*, 636 F.2d 755, 758 (D.C. Cir. 1980). The Court has the “discretion to authorize unsecured stays in cases it considers appropriate,” *id.* at 758, and where an “an adequate factual basis” exists, *Goldberg. Marchesano. Kohlman. Inc. v. Old Republic Sur. Co.*, 727 A.2d 858, 861 n.2 (D.C. 1999). An unsecured stay can be granted when the movant is able to demonstrate “unusual circumstances” to depart from the norm of requiring a bond. *Fed Prescription Serv.*, 636 F.2d at 759–60. The court has also granted an unsecured stay when the movant has a demonstrated ability to pay. *Id.*

#### **I. The Circumstances of This Case Warrant a Stay Without Bond.**

Dr. Mann’s case presents highly unusual circumstances. The Court ordered a judgment of \$530,820.21, where \$406,109.01 of the award was in attorneys’ fees granted pursuant to the Anti-SLAPP Act. Amended Order on Fees at 29. Currently on appeal is the validity of the very statute

that allowed this Court to grant attorneys' fees in the first place, departing from the well-known American Rule. *See Banks v. Hoffman*, 301 A.3d 685 (D.C. 2023), *reh'g en banc granted, opinion vacated*, 308 A.3d 201 (D.C. 2024) (presenting a challenge to the Anti-SLAPP Act as a violation of the District of Columbia Home Rule Act). As the Court noted in the Amended Order on Fees, this district normally adheres to the American Rule for attorneys' fees where "each party is responsible for paying its own fees for legal services absent an 'exception premised upon statutory authority, contractual agreement, or certain narrowly defined common law exceptions'" Amended Order on Fees at 4 (*citing Hundley v. Johnston*, 18 A.3d 802, 806 (D.C. 2011)).

If the very law that grants the fees is struck down, the majority of the award would also be invalid. A statute declared void *ab initio*—"void from the beginning"—should be treated as if it never existed and its effect is retroactive for all cases that remain open. *See Alexander v. Cockrell*, 294 F.3d 626, 629 (5th Cir. 2002); *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993) ("When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule."). The District of Columbia follows this "firm rule of retroactivity" for open criminal and civil cases. *Davis v. Moore*, 772 A.2d 204, 230 (D.C. 2001) (abrogating *Mendes v. Johnson*, 389 A.2d 781 (D.C. 1978) and adopting *Harper, supra*). Given the existence of Dr. Mann's current appeals, the matter will without question be "open" at the time of the *Banks* decision and the Court of Appeals' decision will apply to potentially invalidate the Amended Order on Fees.

Requiring bond on a statutory award of attorneys' fees where the statute may be held void would also be an unusual ruling in the case law, which has dealt with less controversial statutes or

legal claims. *See Godfrey v. Iverson*, 503 F. Supp. 2d 363 (D.D.C. 2007), *aff'd*, 559 F.3d 569 (D.C. Cir. 2009) (unsecured stay denied where original judgment granted based on claims of assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent hiring, and civil conspiracy); *Grand Union Co.*, 637 F. Supp. 356 (unsecured stay denied where original judgment granted based on Employee Retirement Income Security Act of 1974); *Athridge v. Rivas*, 236 F.R.D. 6 (D.D.C. 2006) (stay without supersedeas bond denied where original judgment based on claims of negligence).

Dr. Mann is also not requesting that the Court allow an unsecured stay in an instance where there are remote possibilities that the law could be held invalid sometime in the very distant future. As discussed above, this case will still be pending in appellate proceedings at the time of *Banks* decision, and the decision will come much sooner than resolution of Dr. Mann's appeals. The Court of Appeals is set to hear the *Banks* case *en banc* on February 25, 2025. The undersigned is counsel of record in the *Banks* matter and would be apprised immediately of a decision. Given the very real and imminent possibility that the majority of the fee award is declared void, a stay is warranted.

## **II. NRO Faces No Potential Loss Due To Waiting On Dr. Mann's Appeals.**

The purpose of a supersedeas bond is to "secure the appellee from loss resulting from the stay of execution." *Fed Prescription Serv.*, 636 F.2d at 761. Willingness and ability to pay are, therefore, important considerations. *Goldberg*, 727 A.2d at n.2 (citing *Olympia Equip*, 786 F.2d at 796; *Fed Prescription Serv.*, 636 F.2d at 761). They weigh in favor of a stay here.

Dr. Mann is willing to pay upon resolution of his appeals, and there are no facts of record to indicate Dr. Mann could not fulfill his obligations to pay if his appeals are unsuccessful. Indeed, much of the defense strategy at trial was focused on Dr. Mann's damages from the defamatory

articles at issue and illustrating Dr. Mann’s *current* popularity and notoriety. One demonstrative used by Mr. Simberg’s counsel aptly sums up this strategy—a depiction showing Dr. Mann’s likeness adjacent to rocket ships representing his career trajectory. Williams Decl., Ex. 1. To further this strategy, Mr. Simberg’s counsel also questioned Dr. Mann’s about his gross salary from 2012 through 2017 to emphasize that his “income increased every year after 2012”—a point that was not disputed. Williams Decl., Ex. 2. Dr. Mann is still a Professor, now at the University of Pennsylvania. June 30, 2023 Jt. Pretrial Statement at 7. It is safe to assume he does not make less today than he did eight years ago in 2017. His longstanding work history as a professional scientist at prestigious universities indicates his ability to pay after resolution of his appeals will be the very same as it is today, and security is unnecessary.

### **CONCLUSION**

For the foregoing reasons, this Court should grant Dr. Mann’s motion for a stay of the Amended Order on Fees without requiring a bond, and any proceedings to enforce the award, pending the outcome of Dr. Mann’s appeals.

**RULE 12-I CERTIFICATION**

I hereby certify that counsel for the plaintiff emailed the defendants' counsel on February 5, 2025 regarding the relief sought in this motion. The defendants Rand Simberg, Competitive Enterprise Institute, and Mark Steyn take no position. The defendant National Review, Inc. opposes waiver of the bond requirements.

Dated: February 6, 2025

Respectfully submitted,

*/s/ John B. Williams*

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*Counsel for Plaintiff, Michael E. Mann, Ph.D.*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 6, 2025, I caused a copy of the foregoing *Plaintiff's Motion for Stay of Amended Order Granting in Part National Review Inc.'s Motion for Attorneys' Fees and Supplemental Motion for Fees on Fees* to be served via electronic filing on the following:

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*/s/ John B. Williams*  
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**[PROPOSED] ORDER**

Before the Court is *Plaintiff's Motion for Stay of Amended Order Granting in Part National Review Inc.'s Motion for Attorneys' Fees and Supplemental Motion for Fees on Fees*, filed February 6, 2025. Upon consideration of the motion and the parties' responses thereto, the Court will grant the relief requested in full.

**ACCORDINGLY**, it is this \_\_\_ day of February, 2025, hereby

**ORDERED** that *Plaintiff's Motion for Stay of Amended Order Granting in Part National Review Inc.'s Motion for Attorneys' Fees and Supplemental Motion for Fees on Fees* is **GRANTED** and said order is **STAYED**.

Dated: \_\_\_\_\_, 2025

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Honorable Alfred S. Irving, Jr.  
Associate Judge

***Copies by electronic services to all counsel of record.***