

IN THE SUPREME COURT OF OHIO

**STATE, *ex rel.* THE CINCINNATI
ENQUIRER, a Division of Gannett
Satellite Information Network, Inc.
312 Elm Street
Cincinnati, Ohio 45202**

Case No.

12-1924

Petitioner,

vs.

**HONORABLE ROBERT H. LYONS,
Butler County
Area I Court
118 High St.
Oxford, Ohio 45056**

Respondent.

COMPLAINT FOR WRIT OF MANDAMUS

John C. Greiner (0005551)
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For its Complaint, Petitioner The Cincinnati Enquirer, a division of Gannett Satellite Information Network, Inc. (“The Enquirer”), states as follows:

1. The Enquirer is a newspaper of general circulation in southwestern Ohio.
2. Respondent Robert H. Lyons is the judge for the Butler County Area I Court in Oxford, Ohio.
3. Judge Lyons presided over a criminal misdemeanor prosecution initiated by the Butler County Prosecuting Attorney against an undisclosed criminal defendant (hereinafter the “John Doe Defendant”) in the Butler County Area I Court (“Area I Court”) in Oxford, Ohio (“the Action”).
4. Upon information and belief, the John Doe Defendant pleaded guilty to a misdemeanor charge of disorderly conduct in connection with his role concerning a flier about raping female students that was posted on the campus of Miami University.
5. Immediately following his plea of guilty, the John Doe Defendant applied to seal the official records of the Action (“Application”).
6. The Butler County Prosecuting Attorney did not object to the application.
7. On November 7, 2012, Judge Lyons granted the Application, citing ORC §§ 2953.52 and 2953.53 in support of his Order (“Order”).
8. The effects of the Order are that public access to the case documents has been completely denied, and, in addition, even docket information (including the John Doe Defendant’s identity) is shielded from public view.
9. Upon information and belief, the John Doe Defendant pleaded guilty to a criminal misdemeanor charge and the Court made an entry of conviction. Accordingly, the Action’s

record could not be sealed pursuant to ORC § 2953.52, which has no application to the records of an Action in which a defendant is convicted of a crime.

10. Furthermore, because Judge Lyons erroneously relied on § 2953.52 to seal the record, he failed to comply with Rule 45(E)(2) of the Ohio Rules of Superintendence in the following ways:

- a. Rule 45(E)(2) presumes that the court may restrict public access only on a document-by-document review. Rule 45(E) does not permit the court to issue a blanket order denying public access to all case documents. Upon information and belief, Judge Lyons issued the Order without conducting a document-by-document review.
- b. In considering whether to restrict public access to a case document, Rule 45(E)(2) requires that the court find by clear and convincing evidence that the presumption of public access is outweighed by a higher interest. According to paragraph 4 of the Order, Judge Lyons did not apply the proper standard and considered only whether “the interest of the Defendant outweigh[ed] the legitimate needs of the Government to maintain any record pertaining to [the] case.”
- c. When restricting public access to a case document, Rule 45(E)(3) requires the court to use the least restrictive means available. By imposing a blanket sealing order, Judge Lyons failed to use the least restrictive means available.

11. Rule 47(B) of the Ohio Rules of Superintendence provides that any person aggrieved by the failure of a court to comply with the requirements of Sup. R. 44 through 47 may pursue an action in mandamus pursuant to Chapter 2731 of the Revised Code.

12. The Enquirer is aggrieved by the court's failure to comply with Sup. R. 44 through 47.

13. Upon information and belief, Judge Lyons issued the Order without conducting an evidentiary hearing or making particularized findings that there was a compelling need for closure sufficient to overcome the presumption of openness. Also, Judge Lyons failed to consider less restrictive alternatives to the blanket closure.

14. By failing to conduct the hearing or make the findings as described above, Judge Lyons denied The Enquirer its constitutional right of access to a criminal proceeding.

15. The Enquirer is entitled to a Writ of Mandamus as a result of Judge Lyons' failure to abide by the guarantees of the United States Constitution.

WHEREFORE, the Enquirer requests a Writ of Mandamus ordering Judge Lyons to vacate the Order.

Respectfully submitted,


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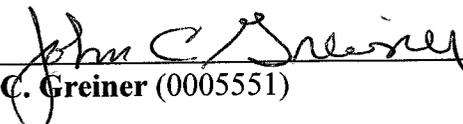
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PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a Summons along with a copy of this *COMPLAINT* to the Respondent identified in the caption on page one via Certified Mail, return receipt requested.



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