Supreme Court of Ohio Clerk of Court - Filed May 03, 2021 - Case No. 2020-1131

IN THE SUPREME COURT OF OHIO

M.R., A CINCINNATI POLICE OFFICER, Plaintiff–Appellee, v. **JULIE NIESEN, et al.,** Defendant–Appellants	Supreme Court case no. 2020-1131 On Appeal from the First District Court of Appeals, Hamilton County, case no. C-200302 Hamilton County Common Pleas case no. A2002596

Brief Amici Curiae of
Law Professors Jonathan Entin, David F. Forte, Andrew Geronimo, Raymond Ku, Stephen Lazarus, Kevin Francis O'Neill, Margaret Christine Tarkington, Aaron H. Caplan, and Eugene Volokh; the National Writers Union; the Society of Professional Journalists; the NewsGuild-CWA; Euclid Media Group; First Amendment Lawyers Association; and Institute for Free Speech,
in Support of Defendant-Appellants

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INTEREST OF AMICI CURIAE

Most of the amici are current or former Ohio professors who teach or have taught First Amendment law, many of them for decades:

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- David F. Forte (Cleveland-Marshall College of Law).
- Andrew Geronimo (Case Western Reserve University School of Law).
- Raymond Ku (Case Western Reserve University School of Law).
- Stephen R. Lazarus (Cleveland-Marshall College of Law).
- Kevin Francis O'Neill (Cleveland-Marshall College of Law).
- Margaret Tarkington (currently Indiana University McKinney School of Law, but formerly University of Cincinnati College of Law).

The other two academic amici are Aaron H. Caplan (Loyola Law School, Los Angeles) and Eugene Volokh (UCLA School of Law), who have written articles that deal with the legal issues involved in this case, Aaron H. Caplan, *Free Speech and Civil Harassment Orders*, 64 Hastings L.J. 781 (2013), Eugene Volokh, *One-to-One Speech vs. One-to-Many Speech, Criminal Harassment Laws, and "Cyberstalking,"* 107 Nw. U.L. Rev. 731 (2013), and Eugene Volokh, *Anti-Libel Injunctions*, 168 U. Pa. L. Rev. 73 (2019). The academic amici also filed a brief, and participated in oral argument, in *Bey v. Rasawehr*, 161 Ohio St. 3d 79, 161 N.E.3d 529, 2020-Ohio-3301, the Ohio Supreme Court's leading case on the First Amendment and broad injunctions against allegedly harmful speech.

Amicus National Writers Union is an organization of more than 1,300 freelance writers, whose mission includes protecting the rights and interests of the full range of writers in the U.S. in all genres, media, and formats. Amicus Society of Professional Journalists, which is the nation's largest and most broad-based journalism organization, is dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior, works to promote the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists, and protects First Amendment guarantees of freedom of speech and press. Amicus the NewsGuild-CWA, a sector of the 600,000-member Communications Workers of America, represents more than 24,000 journalists and communications professionals in the U.S. and Canada at hundreds of news outlets, including large publications like the *New York Times*, small papers like the *Pottstown Mercury*, and digital-only sites like Buzzfeed News.

Amicus Euclid Media Group is the publisher of six alternative newsweeklies and two quarterly magazines in six markets across the United States, including Cincinnati's *CityBeat* and Cleveland's *Scene*, whose respective online publications receive approximately one million pageviews per week.

The First Amendment Lawyers Association is not-for-profit organization whose attorney members practice throughout the United States (including Ohio), Canada, and Europe, where they routinely represent businesses and individuals that engage in

constitutionally protected expression. Its members frequently litigate the constitutionality of court-imposed injunctions that restrict expression, often seeking the immediate appellate review that is at issue here.

The Institute for Free Speech is a nonpartisan, nonprofit organization that works to defend the rights to free speech, assembly, press, and petition.

No party or party's counsel has authored this brief in whole or in part or contributed money that was intended to fund preparing or submitting the brief. No person has contributed money intended to fund preparing or submitting the brief.

INTRODUCTION

Within 48 hours of filing his complaint, police officer "M.R." (Plaintiff–Appellee) sought and received a sweeping prior restraint: an order forbidding two Ohio citizens from publishing information about a public official arising out the performance of his official duties. That order, like all prior restraints, is presumptively unconstitutional. But when those citizens, Julie Niesen and Terhas White (Defendant–Appellants), appealed that order to the First District, the appellate court dismissed the appeal, concluding that there was no final order.

That is at odds with the Constitution, which requires immediate appellate review of judicially imposed prior restraints. This Court should so hold, and apply such immediate review to vacate the trial court's prior restraint. This conclusion follows from three elementary propositions:

1. The trial court's injunction is a prior restraint on Mses. Niesen and White's future speech. "The term 'prior restraint' is used to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur." *Bey*, 161 Ohio St. 3d at 85 (some quotation marks omitted). "Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints." *Id.* (quotation marks omitted). The trial court below forbade Ms. Niesen and Ms. White from mentioning the name of a public official (police officer "M.R.") in any forum or medium. This order forbidding speech activities thus constitutes a "classic example" of a prior restraint.

2. Immediate appellate review is required for prior restraints. Indeed, the U.S. Supreme Court has said as much because prior restraints cause a particularly grievous constitutional harm to both the censored speaker and the public.

Censored citizens have a right to speak (and the public has a right to hear) about current events at the time that they happen, not merely retrospectively after protracted litigation. But the public's interest in a topic will naturally wane with time, and each day that an unconstitutional prior restraint is in effect creates additional constitutional harm. After a long enough time, that harm comes perilously close to that of an outright

censorship. This case demonstrates as much: For seven months and counting,[1] there has been of record an order forbidding Mses. Niesen and White from criticizing a public official by name for events that occurred in June 2020. Immediate appellate review of prior restraints is thus necessary to prevent government officials from exploiting the Ohio Judiciary to immunize themselves from public scrutiny.

3. The trial court's prior restraint on Mses. Niesen and White's speech is an unconstitutional content-based regulation of speech. The order is content-based because it prohibits speech about an individual (here, M.R.). And "before a court may enjoin the future publication of allegedly defamatory statements based on their content, there must first be a judicial determination that the subject statements were in fact defamatory." *Bey*, 161 Ohio St. 3d at 92 (citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 246, 327 N.E.2d 753 (1975)). Here, the trial-court injunction was issued by one judge without the opportunity of a full trial (or even comprehensive briefing), less than 48 hours after the complaint was filed. Thus, the prior restraint was imposed without a judicial determination that the statements were in fact defamatory. Nor is the order limited to such unprotected speech: It broadly prohibits two Ohioan citizens from publishing information about a public official

[1] *See* Order Granting in Part Motion for Temporary Restraining Order (July 24, 2020). Appellants' Appx at 10.

arising out the performance of his official duties, even if the information is not defamatory or an invasion of privacy. The order is thus unconstitutional.

STATEMENT OF THE CASE

The plaintiff, a police officer, sued the defendants, Ohio citizens who criticized his on-duty conduct providing security at a City Council meeting at Cincinnati City Hall. The complaint raised a defamation claim and other similar tort claims. Less than two days after filing the complaint, after a hearing at which the Defendant–Appellants were present and at which the Plaintiff presented no testimony, the court issued an order (the "Order") enjoining the Defendant–Appellants "from publicizing, through social media or other channels, Plaintiff's personal identifying information." The Order did not define "personal identifying information," but the only statute that defines the phrase, R.C. 2913.49(A), defines it to include a person's "name." The Order, which was dated and entered on July 24, had no expiration date. In a subsequent order the court scheduled a preliminary injunction for September 1. Defendants Julie Niesen and Terhas White appealed, but the First District dismissed the appeal on the ground that there was no final order.

The amici otherwise defer to the Defendant–Appellants' statement of the case.

ARGUMENT

Proposition of Law no. 1: When a lower court imposes a prior restraint on expression, immediate appellate review is constitutionally required.

I. The order is a prior restraint on defendant–appellants' speech

The term "prior restraint" refers to administrative or judicial orders that forbid certain speech *before* such speech is communicated. *Bey*, 161 Ohio St. 3d at 85 (some quotation marks omitted). "Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints." *Id.* (quotation marks omitted).

The Order prohibited—and so far as the docket reflects still purports to prohibit—Mses. Niesen and White from identifying police officer M.R. in any future communications, regardless of the content or context. Under this Court's decision last year in *Bey*, the Order is, definitionally, a prior restraint on speech. *See id.*

II. An order that imposes a prior restraint on speech must be subject to immediate appellate review.

The federal Constitution requires "immediate appellate review" of prior restraints. *National Socialist Party of America v. Skokie*, 432 U.S. 43, 44, 97 S. Ct. 2205, 53 L. Ed. 2d 96 (1977). *See also Puruczky v. Corsi*, 11th Dist. Geauga No. 2017-G-0110, 2018-Ohio-1335; *Connor Group v. Raney*, 2d Dist. Montgomery No. 26653, 2016-Ohio-2959; *Int'l Diamond Exch. Jewelers, Inc. v. U.S. Diamond & Gold Jewelers, Inc.*, 70 Ohio App. 3d 667, 591 N.E.2d 881 (2d Dist. 1991).

This principle is fully applicable here. Both *Puruczky* and *Connor Group* provided immediate appellate review for the same type of prior restraint—injunctions entered in response to libel lawsuits, just as here. And *National Socialist Party* provided immediate review for an order enjoining Nazis from marching in Skokie, Illinois. *Nat'l Socialist*

Party, 432 U.S. at 43–44; *see also Collin v. Smith*, 578 F.2d 1197, 1199 (7th Cir. 1978). If Nazis who want to march in a neighborhood populated with thousands of Holocaust survivors are entitled to immediate appellate review of an injunction against their speech, then citizens criticizing a police officer must be entitled to the same.

Immediate appellate review is constitutionally required because of the unique dangers of prior restraints. Prior restraints cause an "immediate and irreversible sanction" unlike any other remedy a court may impose (e.g., a "judgment in a defamation case" or a "criminal penalty") because such other sanctions are "subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted. Only after judgment has become final, correct or otherwise, does the law's sanction become fully operative." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559, 96 S. Ct. 2791, 49 L. Ed. 2d 683 (1976).

That "panoply of protections" does not exist for prior restraints, which is why "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Id.* Prior restraints "fall on speech with a brutality and finality all their own." *Id.* at 609 (Brennan, J., concurring in reversal of prior restraint).

More broadly, every day that a prior restraint remains in place is a First Amendment violation, and "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S.

347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976). "'Where . . . a direct prior restraint is imposed upon the reporting of news by the media, each passing day may constitute a separate and cognizable infringement of the First Amendment.'" *CBS, Inc. v. Davis*, 510 U.S. 1315, 1317, 114 S. Ct. 912, 127 L. Ed. 2d 358 (1994) (Blackmun, J., in chambers) (citation omitted); *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 126 (2d Cir. 2006) (endorsing this principle as requiring "expeditious[]" decision-making as to restraints on First Amendment rights, there the right of access to court records); *Doe v. Pub. Citizen*, 749 F.3d 246, 272–73 (4th Cir. 2014) (same); *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (same), *superseded on other grounds, as stated in Bond v. Utreras*, 585 F.3d 1061, 1068 n.4 (7th Cir. 2009). And of course this principle applies beyond the mainstream media and covers social media users as well.[2]

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[2] Art. I, § 11 of the Ohio Constitution "guarantees to '[e]very citizen' the right to publish freely his or her sentiments on all subjects, regardless of that citizen's association or nonassociation with the press." *Wampler v. Higgins*, 93 Ohio St. 3d 111, 121, 752 N.E.2d 962, 2001-Ohio-1293. "We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers." *Citizens United v. United States*, 558 U.S. 310, 352, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010) (internal quotation marks omitted). "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. . . . The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion." *Lovell v. City of Griffin*, 303 U.S. 444, 452, 58 S. Ct. 666, 82 L. Ed. 949 (1938); *see also Chevaldina v. R.K./FL Mgmt., Inc.*, 133 So. 3d 1086, 1092 (Fla. Dist. Ct. App. 2014) ("Angry social media postings are now common. . . . But analytically, and legally, these rants are essentially the electronic successors of the pre-blog, solo complainant holding a poster on a public sidewalk," and are just as fully protected by the First Amendment).

The injury inflicted by prior restraints is thus not remediable by vacatur or reversal of a prior restraint at a distant future date after final judgment, especially where (as here) the prior restraint relates to a public official and his conduct in official and court proceedings. The parties and the public have a right to speak *contemporaneously*, not merely retrospectively, both about public officials and about court proceedings. *See Bridges v. California*, 314 U.S. 252, 268, 62 S. Ct. 190, 86 L. Ed. 192 (1941) ("[P]ublic interest is much more likely to be kindled by a controversial event of the day than by a generalization, however penetrating, of the historian or scientist."); *Doe v. Pub. Citizen*, 749 F.3d 246, 272 (4th Cir. 2014) (acknowledging the harms of "delayed disclosure" with respect to court proceedings). Indeed, this case exemplifies the unique harms worked by prior restraints: For seven months and counting, Mses. Niesen and White have had this unconstitutional prior restraint hanging over their heads, limiting their ability to fully discuss and inform the public about June 2020 events that involve a public official's performance of his official duties. Immediate appellate review is thus critical to make sure that the injunction does not cause such a loss of First Amendment freedoms.

The logic of these cases turns on the commands imposed by the First Amendment—commands that override any contrary state procedural distinctions that would limit immediate appellate review. And both this Court and the U.S. Supreme Court have recognized that "[t]emporary restraining orders," no less than "permanent

injunctions," "are classic examples of prior restraints" that are fully subject to First Amendment constraints. *Bey*, 161 Ohio St. 3d at 85; *Alexander v. United States*, 509 U.S. 544, 550, 113 S. Ct. 2766, 125 L. Ed. 2d 441 (1993).

Yet the First District took a sharply different approach; it concluded that neither the U.S. Supreme Court's *Skokie* decision nor the Second and Eleventh Districts' decisions applied here, simply because this case involved a temporary restraining order. *M.R.*, 1st Dist. No. C-200302 at ¶9, Appellant's Appx at 7-8. The First District did not acknowledge this Court's or the U.S. Supreme Court's treatment of temporary restraining orders as prior restraints, nor did it explain why the First Amendment's constitutional rule of immediate appellate review for prior restraints would be limited by some state-rule distinction between temporary restraining orders and preliminary injunctions. To answer that question for the First District: It would not. Per the Supremacy Clause, federal constitutional requirements reign supreme over state-court rules of procedure. *See* U.S. Const., art. IV, cl. 2 (the federal Constitution and laws "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding").

This case illustrates well why immediate review of prior restraints contained in temporary restraining orders is particularly important to our constitutional order.

Prior restraints are especially "brutal[] and final[]," *Nebraska Press Ass'n*, 427 U.S. at 609, when (as here) they appear in what is nominally a temporary restraining order.

The reason is that TROs come with an even more stark absence of that "panoply of protections," *id.* at 599, that litigants must be afforded before they are deprived of constitutional rights.

Preliminary injunctions are themselves entered after abbreviated (if not summary) proceedings, but even so, Rule 65(B) and its case law still make clear that a party seeking a preliminary injunction must present evidence in a testimonial setting in which cross-examination is available and must adduce clear and convincing evidence on four separate elements or factors, with an emphasis on the movant's likelihood of success on its claims. *See* Ohio Civ. R. 65(B); *see also Procter & Gamble Co. v. Stoneham*, 140 Ohio App. 3d 260, 267–68 (1st Dist. 2000). Preliminary injunction hearings regularly last hours and often span multiple days. The quality of evidence presented must be such that it would be admissible at trial and that would permit consolidation of the injunction hearing with the trial on the merits. *See* Ohio Civ. R. 65(B)(2).

Temporary restraining orders, on the other hand, are by definition entered with far less evidence, adversarial process, and judicial consideration than even preliminary injunctions. Rule 65(A) permits the issuance of a TRO based on merely an "affidavit or . . . verified complaint," and instructs that a court's focus ought to be primarily on only whether there is a threat of an "immediate and irreparable injury." *See, e.g., ITS Financial, LLC v. Gebre*, 2d Dist. Montgomery no. 25416, 25492, 2014-Ohio-2205, ¶18 (discussing standard for TRO) and ¶23 (discussing more exacting or stringent standard

for preliminary injunction). *See also Central Ohio Transit Auth. v. Transit Workers Union of Am.*, 1987 Ohio App. LEXIS 6218, at *14–15 (10th Dist. Franklin no. 87AP-124, 87AP-174, Mar. 18, 1987) (observing that "a quick hearing can be held to issue a temporary restraining order of limited duration to be followed by a more complete factual hearing which may result in a preliminary injunction").

One tradeoff for the more lenient burden of proof on a TRO is *supposed* to be a limited temporal duration—every TRO is required to "expire by its terms within . . . fourteen days" or less. Ohio Civ. R. 65(A). But many judges, including the judge in this case, fail or refuse to include an expiration term.

The result is that a party bound by a TRO—including a prior restraint within a TRO—is restricted after having received none or almost none of that "panoply of protections" that the Constitution requires and is restricted (or purports to be restricted) for an indefinite period of time. The "brutality and finality" of prior restraints, their "immediate and irreversible sanction" (*Nebraska Press Ass'n Stuart*), and the "irreparable injury" (*Elrod*) that accrues anew with "each passing day" (*CBS, Inc.*) always necessitates immediate appellate review. But those concerns are even more apposite when the prior restraint is a TRO.

Nor is this a purely academic or theoretical concern. The record in this case serves as a great example of why immediate appellate review of prior restraints is needed.

To begin with, defendant-appellant Julie Niesen was represented by counsel at that Friday-morning hearing, but even though the complaint and moving papers had been filed nearly 48 hours earlier, M.R.'s counsel apparently did not provide Niesen's counsel with complete copies of the documents until late Thursday. *See* App. dkt. 9, supp. dkt. 55 (transcript of July 24, 2020, prior restraint hearing) at 16:5-20 (Niesen's counsel: "I would like to make it clear that efforts throughout the day yesterday to receive the remainder of the TRO motion—only the first three pages were sent—I did not receive the full TRO motion until 4:55 yesterday afternoon."). Defendant-appellant Terhas White was *not* represented by counsel at the hearing, and while she may have attended in the gallery, *see id.* at 73:12-19, her appearance was not noted in the transcript and she certainly did not participate.

Next, the hearing at which the prior restraint was entered was *not* an evidentiary hearing. M.R. did not testify and did not attempt to present any other witness's testimony. The presiding judge did not require M.R. to testify, permit cross-examination of him, or question him herself. Instead, M.R.'s counsel recounted the basis for the prior restraint that M.R. was seeking—but "statements of counsel are not evidence." *Corporate Exch. Bldgs. IV &V, Ltd. P'ship v. Franklin County Bd. of Revision*, 82 Ohio St. 3d 297, 299, 695 N.E.2d, 1998-Ohio-382. Even if statements of counsel *were* evidence, M.R.'s counsel hardly mentioned Niesen, other than to say that she had made undisputedly true statements of fact and a statement of opinion. *See* App. dkt. 9, supp. dkt. 55 at 66:24-67:5

(M.R.'s counsel: "So, Your Honor, Ms. Niesen's post, there are factual statements and she's—we're not taking issue with any of that. But taken as a whole, she says there should be zero tolerance of white supremacy in the Cincinnati Police Department.").

None of that procedure comports with the "panoply of protections" that the Constitution requires, to say nothing of the fact that all of Niesen's statements are, unequivocally, constitutionally protected speech. *See Vail v. The Plain Dealer Publ'g Co.*, 72 Ohio St. 3d 279, 281, 649 N.E.2d 182, 1995-Ohio-187 (holding that "The Ohio Constitution provides a separate and independent guarantee of protection for opinion ancillary to freedom of the press," separate and apart from whatever protection the First Amendment provides); *Wampler v. Higgins*, 93 Ohio St. 3d 111, 121, 752 N.E.2d 962, 2001-Ohio-1293 (clarifying that the Ohio Constitution's protection of opinion is not limited to professional press).

And yet, after deliberating for just "a 15-, 20-minute recess," *see* App. dkt. 9, supp. dkt. 55 at 75:23-24, the common pleas judge granted a prior restraint—and did so in the same breath in which she acknowledged that "the First Amendment, which is so dear and cherished by all true Americans . . . allows us to speak freely," regardless of whether the speech is "intelligent and meaningful discourse" or "vile and offensive speech." *Id.* at 77:11-22.

As a matter of constitutional law, the order is both substantively wrong and procedurally deficient. To conform with Supreme Court precedent and to prevent

government officials from using the judiciary to indefinitely immunize themselves from Ohioans' criticisms, this Court should hold that immediate appellate review is required for prior restraints.

III. The order must be vacated because it is an unconstitutional prior restraint on defendant–appellants' protected speech.

Because immediate appellate review is required to determine whether a prior restraint is constitutional, "it is in the interest of judicial economy that we proceed to the merits" of that question. *State v. Moore*, 154 Ohio St. 3d 94, 99, 111 N.E.3d 529, 2018-Ohio-3237. *See also, e.g., Elio v. Akron Transp. Co.*, 147 Ohio St. 363, 365, 71 N.E.2d 707 (1947) (having determined that the appellate court erred, it was appropriate to reach the merits of the purely legal question, "thus avoiding a useless remand of the case to the Court of Appeals"); *Karches v. City of Cincinnati*, 38 Ohio St. 3d 12, 18–19, 526 N.E.2d 1350 (1988) (electing, "in the interest of judicial economy," to decide constitutional question rather than remand).

"Prior restraints on First Amendment expression are presumptively unconstitutional." *Bey*, 161 Ohio St. 3d at 97. Nothing about the Order rebuts this strong presumption; it is an impermissible content-based regulation of protected speech.

"[A] regulation of speech 'about' a specific person," such as the order forbidding speech about plaintiffs in *Bey* or the order forbidding mentioning the name of M.R. in this case, "is a regulation of the content of that speech and must therefore be analyzed as a content-based regulation." *Bey*, 161 Ohio St. 3d at 88. Before a court may enjoin the

future publication of some purportedly unprotected speech because of its content, it must determine that the future publication will not be protected by the First Amendment—i.e., that the publication "will be integral to criminal conduct, defamatory, or otherwise subject to lawful regulation based on its content." *Id.* at 90.

But the trial court enjoined Mses. Niesen and White's future posts without the opportunity for a trial or even comprehensive briefing, less than 48 hours after M.R. filed his complaint. It did not make a judicial determination that "the subject statements were in fact defamatory," *id.* at 92 (citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St. 2d 242, 246, 327 N.E.2d 753 (1975)), or fit within any other First Amendment exception. And even if it had concluded the statements were defamatory, the trial court did not limit the Order to only such unprotected speech. Because there has been no judicial determination that Mses. Niesen and White's future speech will fall outside the First Amendment's protections, the Order is an unconstitutional prior restraint.

CONCLUSION

Prior restraints on speech are rarely constitutional. To make sure that unconstitutional prior restraints suppress speech for as short a time as possible, both the U.S. Supreme Court and Ohio courts have required immediate appellate review for such restraints. This Court should hold the same, and it should also vacate the Order as a content-based prior restraint that is not limited to speech that falls within a First Amendment exception.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify under that a copy of the foregoing was served on counsel for all parties by email on the date of filing.

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