

IN THE SUPREME COURT OF OHIO

STATE, *ex rel.* ESPN, INC.
ESPN Plaza
Bristol, Connecticut 06010

Petitioner,

vs.

THE OHIO STATE UNIVERSITY,
Enarson Hall
154 West 12th Avenue
Columbus, Ohio 43210

Respondent.

Case No.

11-1177

COMPLAINT FOR WRIT OF MANDAMUS

FILED
JUL 11 2011
CLERK OF COURT
SUPREME COURT OF OHIO

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For its Complaint, Petitioner ESPN, Inc. ("ESPN"), states as follows:

1. ESPN is a global sports entertainment company which provides sports-related news and content through a variety of multimedia outlets including television, radio, print-magazines and Internet.

2. Respondent The Ohio State University ("Ohio State") is a large, public university in Columbus, Ohio with a total enrollment of over 64,000 students.

3. The Ohio State football program (the "Program") is one of the most storied and successful in the country. The Program boasts 7 National Championships dating back to 1942, 9 undefeated seasons dating back to 1899, and 35 conference titles dating back to 1906. A perennial championship contender, the Program is an enormous operation that generates revenue for and interest in the university. Ohio State consistently promotes and markets its players as part of this operation.

4. The official Web site of Ohio State football <http://bit.ly/jDunRO> provides detailed biographical information of its coaches and players. On a visit to the site, readers can learn the hometown, major, class year and other information for every player on the roster. The site also touts players' individual accomplishments. Thus, for example, the site notes that Terrelle Pryor, a former Ohio State football player, was all academic Big Ten in 2009.

5. At a press conference on March 8, 2011, then Ohio State football coach Jim Tressel ("Tressel") disclosed that in April, 2010, he'd received e-mails alerting him to the fact that certain Ohio State football players had connections with Eddie Rife, owner of Fine Line Ink, a Columbus tattoo parlor. Rife was the subject of a federal law enforcement investigation. According to Tressel's account of the e-mails, he was notified that federal authorities had raided Rife's house and found \$70,000 in cash and "a lot of Ohio State memorabilia." Per

Tressel's admission, the e-mails also alerted Tressel that players had exchanged signed memorabilia for tattoos.

6. Upon information and belief, Tressel did not forward the e-mails to his superiors at Ohio State or to the National Collegiate Athletic Association ("NCAA"). That decision ultimately led to his resignation and an NCAA investigation. Tressel did, however, forward the e-mail to a Pennsylvania businessman named Ted Sarniak ("Sarniak"). Sarniak is not employed by Ohio State, does not hold a position with the NCAA, nor is he a law enforcement officer. According to information supplied to the Columbus Dispatch by Doug Archie, Ohio State's director of compliance, "Mr. Sarniak is someone who Terrelle had reached out to for advice and guidance throughout his high-school and collegiate career."

7. On April 20, 2011, Justine Gubar, a producer for ESPN, made several written public records requests to Ohio State pursuant to Ohio Rev. Code §149.43. (See Exhibit A to the Affidavit of Justine Gubar). These requests sought access to records relating to the alleged NCAA violations. ESPN asked for documents or correspondence, both internal and external, between the NCAA, Ohio State and its representatives related to the NCAA's investigation of Tressel and student athletes Terrelle Pryor, Devier Posey, Daniel Herron, Mike Adams and Solomon Thomas.

8. The requested records included correspondence among Ohio State officials Doug Archie, Gene Smith, Gordon Gee, Tressel and Sarniak. Specifically, ESPN asked for access to and a copy of "[a]ll emails, letters and memos to and from Jim Tressel, Gordon Gee, Doug Archie, and/or Gene Smith with key word Sarniak since March 15, 2007." (See Exhibit A to Gubar Affidavit).

9. On May 27, 2011, Ohio State responded to the records request by stating that it would not release e-mails from Tressel, Doug Archie, or Gene Smith relating to Sarniak. Ohio State claimed that it was prohibited from doing so by the Federal Educational Rights and Privacy Act ("FERPA"). (See Exhibit B to Gubar Affidavit).

10. FERPA is a federal statute designed to protect the privacy of student education records. FERPA conditions federal funding of academic institutions on adherence to certain statutory privacy standards regarding student education records. This condition on funding does not operate as a prohibition of the release of information. Further, the requested correspondence does not constitute education records as contemplated by FERPA. FERPA neither prohibits nor applies to the release of the records requested by ESPN.

11. Under Ohio Revised Code §149.43, public records are "records kept by any public office." Ohio State constitutes a public office and the requested e-mail correspondence constitutes public records for the purposes of Ohio Revised Code §149.43. Ohio Revised Code §149.43 provides that "[u]pon request...all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours".

12. Ohio State violated Ohio Revised Code §149.43 by refusing to provide ESPN with access to "[a]ll emails, letters and memos to and from Jim Tressel, Gordon Gee, Doug Archie, and/or Gene Smith with key word Sarniak since March 15, 2007."

13. On April 15, 2011, Tom Farrey, a correspondent for ESPN, made a public records request to Ohio State seeking "[a]ll documents and emails, letters and memos related to NCAA investigations prepared for and/or forwarded to the NCAA since 1/1/2010 related to an investigation of Jim Tressel." (See Exhibit A to Affidavit of Tom Farrey). Ohio State refused

to provide the requested records. The University responded, “[w]e will not release anything on the pending investigation.” (See Exhibit B to Farrey Affidavit). The University cited no legal authority to support this denial.

14. R.C. §149.43(B)(3) requires that “[i]f a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied.”

15. Ohio State violated R.C. §149.43(B)(3) when it failed to provide an explanation or legal authority for its refusal to provide the public records requested.

16. On May 11, 2011, ESPN correspondent Tom Farrey requested “[a]ny and all emails or documents listing people officially barred from student-athlete pass lists (game tickets) since January 1, 2007” and “[a]ny report, email or other correspondence between the NCAA and Doug Archie or any other Ohio State athletic department official related to any violation (including secondary violation) of NCAA rules involving the football program, since January 1, 2005.” (See Exhibit C to Farrey Affidavit). Ohio State did not provide these records and instead responded, “[w]e would deem this to be overly broad per Ohio’s public record laws.” (See Exhibit D to Farrey Affidavit). Aside from this very vague reference to “Ohio’s public record laws,” the University cited no legal authority to support this denial.

17. R.C. §149.43(B)(2) requires that “[i]f a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide

the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties."

18. Ohio State violated R.C. §149.43(B)(2) and R.C. §149.43(B)(3) when it summarily denied ESPN's requests as overbroad, without citing legal authority for that denial, or providing ESPN with the opportunity to revise the request.

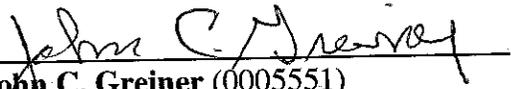
19. Ohio Revised Code §149.43(C)(1) permits a party aggrieved by the failure of a public office to make public records available to proceed with a mandamus action, which may be commenced in the Ohio Supreme Court pursuant to its original jurisdiction under Section 3 of Article IV of the Ohio Constitution. Ohio Revised Code §149.43(C)(1) also provides that the aggrieved party may seek a judgment "that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action."

WHEREFORE, ESPN requests a Writ of Mandamus ordering Ohio State to make available copies of all emails, letters and memos to and from Jim Tressel, Gordon Gee, Doug Archie, and/or Gene Smith with key word Sarniak since March 15, 2007, all documents and emails, letters and memos related to NCAA investigations prepared for and/or forwarded to the NCAA since 1/1/2010 related to an investigation of Jim Tressel, any and all emails or documents listing people officially barred from student-athlete pass lists (game tickets) since January 1, 2007, any report, email or other correspondence between the NCAA and Doug Archie or any other Ohio State athletic department official related to any violation (including secondary violation) of NCAA rules involving the football program, since January 1, 2005, and a judgment awarding attorney's fees and court costs associated with bringing this action.

Respectfully submitted,

Of Counsel:

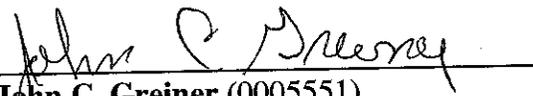
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PRAECIPE FOR SERVICE

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.


John C. Greiner (0005551)