

ORIGINAL

IN THE SUPREME COURT OF OHIO

MATTHEW RIES, ADMR. et al., :  
 Appellants, :  
 vs. : Case No. 2012-0954  
 THE OHIO STATE UNIVERSITY :  
 MEDICAL CENTER, :  
 Appellee. : On Appeal From the  
 : Franklin County Court  
 : of Appeals, Tenth  
 : Appellate District

**APPELLANTS' MOTION TO STRIKE APPELLEE'S BRIEF AND SUPPORTING DOCUMENTS**

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## MOTION TO STRIKE

Appellants, Matthew Ries, et al., now respectfully move to strike Appellee's Merit Brief and all supporting documents, couched as "Second Supplement to Briefs." Appellee's Merit Brief relies heavily upon documents that are not part of the record on appeal, and therefore, the brief should be stricken. Further, Appellee's attempt to file a "Second Supplement to Briefs" is an improper attempt to place additional, new evidence before this Court and should not be permitted.

Sup. Ct. Prac. R. 15.01, former Sup. Ct. Prac. R. 5.1, governs the composition of the record on appeal, stating, in part, that "[i]n all appeals, the record on appeal shall consist of \*\*\* (a) The original papers and exhibits to those papers; (b) The transcript of proceedings and exhibits, along with an electronic version of the transcript, if available; (c) Certified copies of the journal entries and the docket prepared by the clerk of the court or other custodian of the original papers." The rule further indicates that "[w]here applicable, the record on appeal shall consist of all the above items from both the court of appeals and the trial court."

This rule clearly indicates that evidentiary materials that were not part of the record before the trial court or the court of appeals are not part of the record before this Court.

Appellee's Merit Brief relies upon purported evidentiary exhibits that recently were created or obtained, and were not part of the record either before the Court of Claims or the Court of Appeals. For example, Appellee cites and discusses minutes of a committee meeting allegedly held in November 2012, the content of a website accessed on February 2, 2013, and a resolution and financial report each dated from 2011. These materials were not part of the record, and Appellant has not seen them nor addressed them in his case. As this Court's rule indicates,

such material is not part of the record on appeal, and should be stricken. Further, inasmuch as Appellee's Merit Brief relies upon this material, it also is subject to being stricken.

Respectfully submitted,



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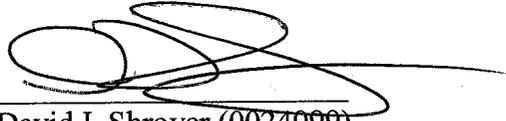
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Certificate of Service

I certify that a copy of the foregoing was sent by ordinary U.S. mail to counsel of record for Appellee, Alexandra T. Schimmer, Solicitor General, 30 East Broad Street, 17<sup>th</sup> Floor, Columbus, Ohio 43215, on February 7, 2013.



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