

In the
Supreme Court of Ohio

STATE OF OHIO, *ex rel.*
ANNA SCHIFFBAUER,

Relator,

vs.

LARRY BANASZAK, et al.,

Respondents.

Case No. 2014-0244

Original Action in Mandamus

RELATOR'S MOTION TO STRIKE

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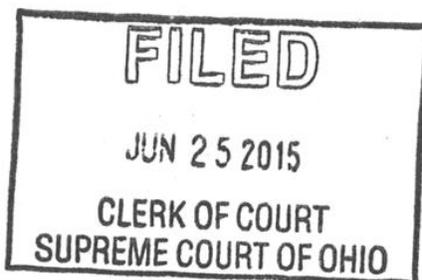
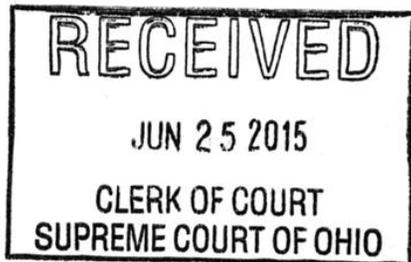
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Relator Anna Schiffbauer (“Schiffbauer”) requests this Court to strike from the record the Affidavit of Douglas Willard and the following portions of its Memorandum Contra to Schiffbauer’s Motion for Statutory Damages and Attorney’s Fees:

1. Page 4, Section III, A.:

“It must be emphasized that Relator already had the requested records and those records were also *always available to Relator and other members of the public* at the public offices of the Westerville Mayor’s Court, Westerville Municipal Court and/or Westerville Police Department.”

2. Pages 5-6:

“After listening to the presentation by Assistant Attorney General Moorman regarding *Oriana House, supra*, Deputy Chief Willard and Sergeant Reffitt approached and questioned Assistant Attorney General Moorman at a break and specifically asked whether the University’s Police Department was subject to the PRA.”

After disclaiming that he was not the University’s legal counsel and could not provide a binding legal opinion, Assistant Attorney General Moorman advised Deputy Chief Willard and Sergeant Reffitt, “with specific detail that in his opinion it is ‘well established’ through the *Oriana House* case standard that Otterbein University’s Police Department was *not* subject to Ohio’s Public Records Act.” ...

“Subsequently, this firm concurred with the prior advice of both the Assistant Attorney General and the Blaugrund law firm.”

3. Page 9, Footnote 9:

“The University’s legitimate public policy concern for student expectations of privacy is not hypothetical. The University Dean of Students has responded to a distraught parent whose daughter had a student newspaper reporter telephone a female student and ask for an interview the day after she had reported a sexual assault and was in effect ‘re-victimized’ by the reporter.”

The Willard affidavit and the passages from the brief violate S. Ct. Prac. R. 12.06. This court should strike those passages and disregard them.

Supreme Court Rule of Practice provides:

S.Ct.Prac.R. 12.06. Presentation of Evidence.

To facilitate the consideration and disposition of original actions, counsel should submit, when possible, an agreed statement of facts to the Supreme Court. All other evidence shall be submitted by affidavits, stipulations, depositions, and exhibits. Affidavits shall be made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached.

The referenced passages do not comply with this rule. This court should not consider any of the evidence improperly submitted.

The gist of the Willard affidavit recounts a conversation between Willard and Assistant Attorney General Robert Moorman, in which Mr. Moorman allegedly assured Willard that the Otterbein Police Department was not subject to the Ohio Public Records Act.¹ Mr. Moorman's comments are out of court statements introduced to prove the matter asserted. They are inadmissible hearsay. And since S. Ct. Prac.R. 12.06 states an affidavit may only set forth facts admissible in evidence, the Willard affidavit does not comply and must be stricken. Any references in the brief to the affidavit must be stricken as well.

The passage set out at page 4 contains a statement of fact that appears nowhere in the record and was not introduced via any of the methods described in Rule 12.06. This passage must be stricken.

Similarly, footnote 9 sets forth information regarding an alleged telephone conversation between the Dean of Students and a "distraught parent." There is no evidence in the record establishing this fact and this court should strike any reference to it.

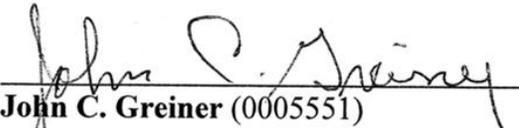
¹ The copy of Respondents' Memorandum available via the court's online docket does not contain a second page, despite the fact that the Memorandum mentions paragraph 11, which presumably appears on the second page.

The Supreme Court Rules of Practice ensure this Court will render rulings in original actions based solely on evidence properly presented. This Court should not reward Respondents' efforts to circumvent the Rules. This Court should strike the evidence noted in this motion.

Respectfully submitted,

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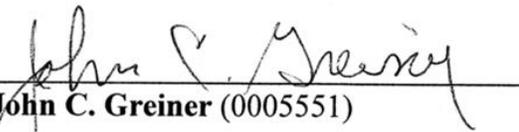

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *MOTION TO STRIKE* was served by regular U.S. Mail, postage prepaid, this 24 day of June, 2015, upon the following:

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