

**In the  
Supreme Court of Ohio**

<b>STATE OF OHIO, <i>ex rel.</i></b>	:	Case No. 2015-1222
<b>THE CINCINNATI ENQUIRER, et al.</b>	:	
	:	Original Action in Mandamus
Relators,	:	
	:	
vs.	:	
	:	
<b>JOSEPH T. DETERS, HAMILTON COUNTY PROSECUTING ATTORNEY,</b>	:	
	:	
Respondent.	:	

---

**RELATORS' MOTION TO STRIKE NEWLY SUBMITTED EVIDENCE**

---

JOHN C. GREINER (0005551)\*  
*\*Counsel of Record*  
Darren W. Ford (0086449)  
GRAYDON HEAD & RITCHEY LLP  
1900 Fifth Third Center  
511 Walnut Street  
Cincinnati, OH 45202-3157  
Phone: (513) 629-2734  
Fax: (513) 651-3836  
E-mail: jgreiner@graydon.com

*Counsel for Relators*

JOSEPH T. DETERS  
PROSECUTING ATTORNEY  
HAMILTON COUNTY, OHIO

Andy Douglas (0000006)\*  
*\*Counsel of Record*  
Roger E. Friedmann (0009874)  
Christian J. Schaefer (0015494)  
Michael J. Friedmann (0090999)  
230 East Ninth Street, Suite 4000  
Cincinnati, OH 45202  
DDN: (513) 946-3279 (Douglas)  
DDN: (513) 946-3025 (Roger Friedmann)  
DDN: (513) 946-3041 (Schaefer)  
DDN: (513) 946-3197 (Michael Friedmann)  
Fax: (513) 946-3018  
E-mail: andy.douglas@hcpros.org  
roger.friedmann@hcpros.org  
chris.schaefer@hcpros.org  
michael.friedmann@hcpros.org

*Counsel for Respondent, Joseph T. Deters,  
Prosecuting Attorney for Hamilton County,  
Ohio*

Relators The Cincinnati Enquirer, a division of Gannett GP Media, Inc., Scripps Media, Inc. d/b/a WCPO-TV, The Associated Press, Raycom Media d/b/a WXIX-TV, Hearst Corporation d/b/a WLWT-TV, and Sinclair Media III, Inc. d/b/a WKRC-TV (“Relators”) respectfully move this Court to strike extraneous material submitted by Respondent Joseph T. Deters, Hamilton County Prosecuting Attorney in its Merit Brief, filed with the Court on February 26, 2016.

The Court set the evidence submission deadline in this matter as January 19, 2016. Relying on the evidence submitted by the parties by the submission deadline, Relators filed their Merit Brief on February 8, 2016. Respondent’s Merit Brief, however, includes as attachments several documents that it did not submit by the submission deadline. This extraneous material consists of all of the pages attached to the brief as A1 through A19. Moreover, none of the documents attached constitute appropriate evidence under Sup.Ct.Prac.R. 12.06, which requires that evidence be submitted by “affidavits, stipulations, depositions, and exhibits.” *Black v. Board of Revision*, 16 Ohio St.3d 11, 17, 475 N.E.2d 1264 (1985).

Respondent’s attempt to ambush Relators with new evidence several weeks after the deadline, and knowing that Relator would have only 7 days to respond, is the worst sort of gamesmanship. Not only did Relators not have this evidence before formulating the arguments advanced in their Merit Brief, they are constrained in their ability to analyze and consider whether the new materials warrant a response. Accordingly, the Court should strike the attachments to Respondent’s Merit Brief, and decline to consider any arguments Respondent makes in its Merit Brief that cite or otherwise rely on this new evidence.

Respectfully submitted,

*Of Counsel:*

GRAYDON HEAD & RITCHEY LLP  
1900 Fifth Third Center  
511 Walnut Street  
Cincinnati, OH 45202-3157  
Phone: (513) 621-6464  
Fax: (513) 651-3836

/s/ John C. Greiner  
**John C. Greiner** (0005551)  
*Counsel for Relators*  
Darren W. Ford  
GRAYDON HEAD & RITCHEY LLP  
1900 Fifth Third Center  
511 Walnut Street  
Cincinnati, OH 45202-3157  
Phone: (513) 629-2734  
Fax: (513) 651-3836  
E-mail: jgreiner@graydon.com

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing *Relators' Motion to Strike Newly Submitted Evidence* was served upon all counsel of record via email pursuant to Ohio R. Civ. P. 5(B)(2)(f), on this 4th day of March, 2016.

Joseph T. Deters, Esq.  
Prosecuting Attorney, Hamilton County, Ohio  
Andy Douglas  
Roger E. Friedmann  
Christian J. Schaefer  
Michael J. Friedmann  
230 East Ninth Street, Suite 4000  
Cincinnati, OH 45202  
andy.douglas@hcpros.org  
roger.friedmann@hcpros.org  
chris.schaefer@hcpros.org  
michael.friedmann@hcpros.org

/s/ John C. Greiner  
**John C. Greiner** (0005551)