

Case No. _____

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.* CRAIG A. SHUBERT,

Relator,

v.

**ALISON M. BREAUX,
Judge, Summit County Common Pleas Court,**

Respondent.

Original Action in Mandamus and Prohibition

State of Ohio v. Jeremiah E. Stoehr

Summit County Common Pleas Court, Case No. CR-2024-02-0419

**VERIFIED COMPLAINT FOR
WRIT OF MANDAMUS AND WRIT OF PROHIBITION**

Counsel for Relator Craig A. Shubert:

**Curt C. Hartman (0064242)
THE LAW FIRM OF CURT C. HARTMAN
7394 Ridgepoint Drive, Suite 8
Cincinnati, Ohio 45230
(513) 379-2923
*hartmanlawfirm@fuse.net***

Counsel for Respondent Alison M. Breaux:

**Elliot J. Kolkovich (0087316)
John F. Galonski (0061792)
SUMMIT COUNTY PROSECUTOR'S OFFICE
53 University Avenue #6
Akron, Ohio 44308
(330) 643-2800
*galonski@prosecutor.summitoh.net***

**SUPREME COURT
OF THE STATE OF OHIO**

STATE OF OHIO <i>ex rel.</i> CRAIG A. SHUBERT,	:	Case No. _____
% Curt C. Hartman	:	
The Law Firm of Curt C. Hartman	:	
7394 Ridgepoint Drive, Suite 8	:	
Cincinnati, Ohio 45230	:	
	:	
Relators,	:	
	:	
v.	:	VERIFIED COMPLAINT
	:	FOR WRIT OF MANDAMUS
	:	AND WRIT OF PROHIBITION
	:	
ALISON M. BREAUX,	:	
Judge, Summit County Common Pleas Court	:	
209 S. High Street	:	
Akron, Ohio 44308,	:	
	:	
Respondent.	:	
	:	

Comes now the STATE OF OHIO, by and through Relator CRAIG A. SHUBERT, and, in support of the issuance of a writ of mandamus and a writ prohibition directed to ALISON M. BREAUX, a judicial officer of the Summit County Common Pleas Court, states as follows:

1. This original action in mandamus and in prohibition arises from the actions of Judge ALISON BREAUX whereby Judge BREAUX ordered the Summit County Clerk of Courts to “remove any public access to the docket or images” for a specific criminal case currently pending in the Summit County Court of Common Pleas. *See Order* (attached hereto as *Exhibit C*).

2. Four minutes after the defendant in the *Underlying Criminal Case* filed a motion to seal the docket of the case, Judge BREAUX summarily granted said motion, simply declaring

that she “carefully considered” the motion and that “good cause for the sealing of the docket” had been shown.¹ *See Order*.

3. In so ordering the Summit County Clerk of Courts to “remove any public access to the docket or images” in a specific criminal case currently pending in the Summit County Court of Common Pleas, Judge BREAUX violated the First Amendment to the United States Constitution and violated the requirements of the Ohio Rules of Superintendence as they concern public availability and public access to documents in court cases.

4. Based upon the precedent of this Court, including, most notably, *State ex rel. Cincinnati Enquirer v. Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580, a peremptory writ of mandamus should immediately issue ordering Judge BREAUX to vacate the *Order* and to conduct a proper review of both the *Motion to Seal* and the pertinent documents pursuant to Rules 44 and 45 of the Ohio Rules of Superintendence and a peremptory writ of prohibition should immediately issue barring Judge BREAUX from enforcing the *Order* sealing the docket in the *Underlying Criminal Case*. *See id.* ¶25. Alternatively, an alternative writ of mandamus and an alternative writ of prohibition should issue.

¹ The “four-minute” window is from when the *Motion to Seal Clerk of Court’s Docket* (attached hereto as *Exhibit B*) was filed in the clerk’s office at 2:02 *p.m.* on May 9, 2024, to when the *Order* signed by Judge BREAUX (attached hereto as *Exhibit A*) was filed in the clerk’s office at 2:06 *p.m.* that same day. Within these four minutes, all the following would have had to miraculously occur: the *Motion* was filed, counsel would have had to then walk to the courtroom or chambers of Judge BREAUX to present the motion, the Summit County Prosecutor would have had to have been notified and appeared (unless the *Order* was granted *ex parte*), Judge BREAUX would have then had to read the motion (so as to “carefully consider” it), Judge BREAUX would have had to then signed the *Order*, and the signed *Order* then be walked back to the clerk’s office to be filed. Amazingly, a tremendous number of events occurred during this four-minute window.

Parties

5. Relator CRAIG A. SHUBERT is a resident and taxpayer in Summit County, and a formerly credentialed journalist for major wire services and broadcast network affiliates. As the *Underlying Criminal Case* is a matter of great concern within the community, Mr. SHUBERT has sought to keep himself abreast of the *Underlying Criminal Case* by inspecting the filings in the *Underlying Criminal Case* through the remote access provided by the Summit County Clerk of Courts (at least until all remote access was suddenly and without warning banned on May 9, 2024).

6. Respondent ALISON M. BREAUX is a judge of the Summit County Common Pleas Court and is the judge assigned to the *Underlying Criminal Case*. In her capacity as judge of the Summit County Common Pleas Court, Judge BREAUX is a “court” within the meaning of Ohio Sup. R. 45(B) and a “court of common pleas” within the meaning of Ohio Sup. R. 1(A).

The Underlying Criminal Case

7. On February 7, 2024, the Summit County Grand Jury return a five-count indictment against Jeremiah Earl Stoehr, charging him with one count of rape (F1), two counts of kidnapping (F1), a count of gross sexual imposition (F3) and a count of disseminating content harmful to a juvenile (F5), thus commencing the *Underlying Criminal Case*.

8. A true and accurate copy of the *Indictment* as filed with the Summit County Clerk of Courts is attached hereto as *Exhibit A*.

9. The *Underlying Criminal Case* is pending in the Summit County Common Pleas Court with Case No. CR-2024-02-0419 and Judge BREAUX is the judge assigned to the *Underlying Criminal Case*.

10. At 2:02 *p.m.*, on May 9, 2024, the defendant in the *Underlying Criminal Case* filed a *Motion to Seal Clerk of Court's Docket*.

11. A true and accurate copy of the *Motion to Seal Clerk of Court's Docket* as filed with the Summit County Clerk of Courts is attached hereto as *Exhibit B*.

12. At 2:06 *p.m.*, on May 9, 2024, *i.e.*, only 4 minutes after the *Motion to Seal* was filed, the *Order* wherein Judge BREAUX granted the *Motion to Seal* was filed with the Summit County Clerk of Courts. *See* note 1, *supra*.

13. A true and accurate copy of the *Order* as filed with the Summit County Clerk of Courts is attached hereto as *Exhibit C*.

14. As indicated in the *Motion to Seal*, the *Underlying Criminal Case* was not generally known in the community for the first three months but had just, “in the last week” become a matter which the *Motion* described as “sensationalized in the news media, the community, and on social media [websites].”

15. The existence of the *Underlying Criminal Case* and public concern has been the subject of recent news reports, including television news media. By way of example, attached hereto as *Exhibit D*, is a copy of a report on the *Case* from WJW Fox 8 New out of Cleveland. Said report, including the associated video, is available at <https://fox8.com/news/udson-senior-charged-with-raping-9-year-old-still-attends-prom-sporting-events-community-wants-answers/>.

COUNT I – Mandamus

16. The Ohio Rules of Superintendence apply to all courts of common pleas in the State of Ohio. *See* Ohio Sup. R. 1(A).

17. The First Amendment to the United States Constitution, as incorporated against the states by the Fourteenth Amendment to the United States Constitution, gives the public a

presumptive right of access to court documents filed in a criminal case. *Indianapolis Star v. United States (In re Fair Fin.)*, 692 F.3d 424, 429 (6th Cir. 2012)(“[u]nder the First Amendment, the public and the press enjoy a right of access to criminal trials” and “this right is not limited to the trial itself but can apply to other criminal proceedings and records”); *see State ex rel. Beacon Journal Publ’g Co. v. Bond*, 98 Ohio St. 3d 146, 781 N.E.2d 180, 2002-Ohio-7117 ¶¶14-20 (recognizing “the well-settled principle that the First Amendment guarantees the public and press a coextensive right of access to criminal proceedings” extends to jury questionnaires); *see also Rudd Equip. Co., Inc. v. John Deere Constr. & Forestry Co.*, 834 F.3d 589, 593-95 (6th Cir. 2016); *Tri-County Wholesale Distribs., Inc. v. Wine Grp., Inc.*, 565 F. App’x 477, 490 (6th Cir. 2012)(Gwin, J., concurring and dissenting in part)(“[t]he First Amendment access right extends to court dockets, records, pleadings, and exhibits, and establishes a presumption of public access that can only be overcome by specific, on-the-record findings that the public’s interest in access to information is overcome by specific and compelling showings of harm”).

18. Consistent with the First Amendment, Ohio Sup. R. 45(A) provides that “[c]ourt records are presumed open to public access.”

19. A “court record” includes “a case document...regardless of physical form or characteristic, manner of creation, or method of storage.” Ohio Sup. R. 44(B).

20. “Public access” means “both direct access and remote access,” Ohio Sup. R. 44(I), with “direct access” meaning “the ability of any person to inspect and obtain a copy of a court record at all reasonable times during regular business hours at the place where the record is made available,” Ohio Sup. R. 44(J), and “remote access” meaning “the ability of any person to electronically search, inspect, and copy a court record at a location other than the place where the record is made available.” Ohio Sup. R. 44(K).

21. All documents to which the *Order* restricts public access constitutes “a document or information in a document submitted to a court or filed with a clerk of court in a judicial action or proceeding.” Thus, every document filed in the *Underlying Criminal Case* constitutes a “case document” within the meaning of Ohio Sup. R. 44(C)(1).

22. Under the Ohio Rules of Superintendence, a court may only restrict public access to a “case document” or information in a case document if the court complies with the requirements of Ohio Sup. R. 45(E).

23. Before restricting public access, a court must find “by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest,” upon consideration of the factors set forth in Ohio Sup. R. 45(E)(2)(a)-(c).

24. “When restricting public access to a case document...the court shall use the least restrictive means available.” Ohio Sup. R. 45(E)(3).

25. An order restricting access to the entirety of case documents “shall be filed in the case file,” and “[a] journal entry shall reflect the court’s order.” Ohio Sup. R. 45(E)(4).

26. Under the First Amendment, “[o]nly the most compelling reasons can justify non-disclosure of judicial records.” *Rudd Equip. Co., Inc. v. John Deere Constr. & Forestry Co.*, 834 F.3d 589, 593 (6th Cir. 2016).

27. To determine whether a record was appropriately sealed, a court should consider “among other things, the competing interests of the defendant’s right to a fair trial, the privacy rights of participants or third parties, trade secrets, and national security.” *Rudd Equip. Co., Inc. v. John Deere Constr. & Forestry Co.*, 834 F.3d 589, 593 (6th Cir. 2016).

28. In ruling on the *Motion to Seal*, Judge BREAUX considered, based on information and belief, no evidence, but only the *ipse dixit* of counsel.

29. Thus, based on information and belief, Judge BREAUX considered no evidence in issuing the *Order*.

30. Because the *Motion to Seal* was not supported by any evidence, it could not have established by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest in consideration of the factors set forth in Ohio Sup. R. 45(E)(2)(a)-(c).

31. Because Judge BREAUX did not have evidence before her sufficient to make a finding by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest, each of the materials subject to the *Order* remains a “court record” subject to public access under Ohio Sup. R. 45(A) and the First Amendment.

32. Moreover, in issuing the *Order*, based on information and belief, Judge BREAUX did not consider, much less “use the least restrictive means available,” as it is required to do pursuant to Ohio Sup. R. 45(E)(3).

33. “[M]andamus is the appropriate remedy to enforce provisions of the Rules of Superintendence requiring courts to provide public access to court records.” *State ex rel. Cincinnati Enquirer v. Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580 ¶7.

34. Ohio Sup. R. 47(B) provides that any person aggrieved by the failure of a court to comply with the requirements Ohio Sup. R. 44 through 47 may pursue an action in mandamus pursuant to Chapter 2731 of the Revised Code.

35. “[B]ecause [Ohio] Sup. R. 47(B) allows a mandamus action as a remedy for a person aggrieved by a court’s failure to comply with [Ohio] Sup. R. 44 through 47, the [relator] need show only a clear legal right to relief and a clear duty on the part of the respondent to provide it and does not need to also show the lack of an adequate remedy in the ordinary course

of law.” *State ex rel. Cincinnati Enquirer v. Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580 ¶10; *but see id.* ¶¶27-28 (Kennedy, J., concurring)(even though “the superintendence rules regulating judicial records abridge a substantive right of the people created by the Public Records Act, the Public Records Act should control the outcome of this case. Nevertheless, because the [relator] was following the precedent of this court in seeking the records under Sup. R. 44 through 47 and because I agree with the result reached by the majority in this case, I concur in the court’s judgment”).

36. A court’s failure to follow the procedures for sealing a case document or information therein renders the order sealing the document void, and the entire court record remains subject to public access. *See State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 974 N.E.2d 89, 2012-Ohio-3328 ¶37 (because “the presumption of public access has not been overcome by the requisite clear and convincing evidence of a higher interest and that the public is entitled to access to the sealed records under the Superintendence Rules,... relators are entitled to a writ of mandamus to compel the judge to unseal and provide access” to the records subject to sealing order).

37. Additionally, when a court orders the sealing or limiting of access to court documents in an order that is overbroad and/or not supported by clear and convincing evidence, mandamus will issue directing the judge issuing said order to vacate the order and to conduct a proper review of the documents prior to issuing a sealing order. *State ex rel. Cincinnati Enquirer v. Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580 ¶¶7-23.

38. Further, this Court has held that mandamus is the appropriate mechanism by which to obtain access to court records under the First Amendment. *State ex rel. Beacon Journal Publ’g Co. v. Bond*, 98 Ohio St. 3d 146, 781 N.E.2d 180, 2002-Ohio-7117 ¶49 (“we have held

that mandamus is the proper remedy when a right of access is predicated on a constitutional challenge”).

39. While the Summit County Clerk of Court provides remote access to docket and court documents, including for criminal cases, through a search engine available from its website (<https://clerkweb.summitoh.net/RecordsSearch/SearchByCaseNbrCriminal.asp>), a search for the *Underlying Criminal Case*, either by defendant’s name or case number, returns no information whatsoever. Stated otherwise, such a search fails to reveal even the existence of the *Underlying Criminal Case*, let alone the docket or any case documents associated with the *Case*. Based upon information and belief, the Summit County Clerk of Court took such action so as to comply with the *Order* issued by Judge BREAUX.

40. Relator is aggrieved by Respondent’s failure to comply with Ohio Sup. R. 45(E) when it restricted public access to the case documents set forth in the *Order* including, at a minimum, the ability to monitor or track the proceedings in the *Underlying Criminal Case* through remote access. Relator also challenges the *Order* on constitutional grounds, thus making mandamus an appropriate remedy.

41. Respondent has a clear legal duty to vacate the *Order* and allow public access of the docket and case documents in the *Underlying Criminal Case*.

42. Accordingly, Relator is entitled to a writ of mandamus compelling Judge BREAUX to vacate the *Order* directing the Summit County Clerk of Courts to “remove any public access to the docket or images” for the *Underlying Criminal Case* and, pursuant to Ohio Sup. R. 44 and 45, to conduct a proper consideration of evidence and all legal standard prior to imposing any restriction or prohibition, if any, upon public access to court documents in the *Underlying Criminal Case*.

COUNT II – Prohibition

43. Relator incorporates the preceding allegations as if fully incorporated here.

44. A writ of prohibition may issue to bar a judge from enforcing an order sealing court records where the court failed to make the findings required by Ohio Sup. R. 45(E). *See State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 974 N.E.2d 89, 2012-Ohio-3328 ¶¶ 38-40 (issuing writ of prohibition, in addition to mandamus, where defendants failed to submit “clear and convincing evidence to support the court’s sealing orders”).

45. “To prevail on its prohibition claim, [a relator] must establish that [a judge sealing court records] is about to or has exercised unauthorized judicial power and that [the relator] lacks an adequate remedy in the ordinary course of law.” *State ex rel. Cincinnati Enquirer v. Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580 ¶24.

46. An order that fails to comply with the requirements of Ohio Sup. R. 45 is unauthorized as a matter of law, and thus unenforceable.

47. The *Order* issued by Judge BREAUX failed to comply with the requirements of Ohio Sup. R. 45(E) and the First Amendment, and thus, is unauthorized and unenforceable as a matter of law.

48. “In [*State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 974 N.E.2d 89, 2012-Ohio-3328], when [this Court] issued a writ of mandamus to compel access to court records, [this Court] also issued a writ of prohibition to invalidate the trial court’s erroneous orders and prevent the judge from restricting access.” *State ex rel. Cincinnati Enquirer v. Shanahan*, 166 Ohio St.3d 382, 185 N.E.3d 1089, 2022-Ohio-448 ¶29.

49. In [*State ex rel. Cincinnati Enquirer v. Shanahan*, 166 Ohio St.3d 382, 185 N.E.3d 1089, 2022-Ohio-448], [this Court] summarily granted a writ of prohibition barring the trial

judge from restricting access to the officer’s affidavit, reasoning that because the relators had shown entitlement to a writ of mandamus, they were necessarily entitled to a writ of prohibition.” *State ex rel. Cincinnati Enquirer v. Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580 ¶24.

50. Applying the logic and consistent with the disposition in *Wolff*, *Shanahan*, and *Forsthoefel*, the STATE OF OHIO, by and through Relator, is entitled to the issuance of a writ of prohibition barring Judge BREAUX from enforcing her order. *See State ex rel. Cincinnati Enquirer v. Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580 ¶24 (“[a]pplying *Shanahan*’s logic here, we conclude that the [relator] is entitled to a writ of prohibition because it has shown entitlement to a writ of mandamus”).

51. Furthermore, Judge BREAUX has clearly exercised and is threatening to exercise unauthorized judicial power and Mr. SHUBERT lacks an adequate remedy in the ordinary course of law.

52. Accordingly, Relator is entitled to a writ of prohibition barring Judge BREAUX from enforcing the *Order* directing the Summit County Clerk of Courts to “remove any public access to the docket or images” for the *Underlying Criminal Case*.

WHEREFORE, Relator respectfully requests, consistent with the relief granted in *State ex rel. Cincinnati Enquirer v. Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580, and any other comparable case law, that this Court:

- A. grant a writ of mandamus ordering Judge BREAUX to vacate the *Order* directing the Summit County Clerk of Courts to “remove any public access to the docket or images” for the *Underlying Criminal Case* and, pursuant to Ohio Sup. R. 44 and 45, to conduct a proper consideration of evidence and all legal standard prior to

imposing any restriction or prohibition, if any, upon public access to court documents in the *Underlying Criminal Case*;

- B. grant a writ of prohibition barring Judge BREAUX from enforcing the *Order* directing the Summit County Clerk of Courts to “remove any public access to the docket or images” for the *Underlying Criminal Case*;
- C. all other appropriate relief, in law or in equity, that is just and equitable.

Respectfully submitted,

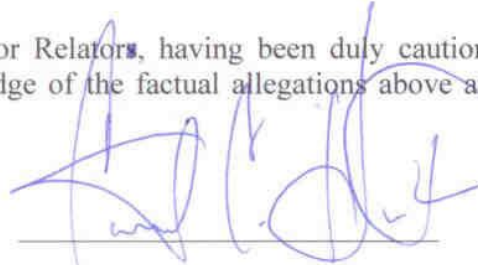
/s/ Curt C. Hartman
Curt C. Hartman (0064242)
THE LAW FIRM OF CURT C. HARTMAN
7394 Ridgepoint Drive, Suite 8
Cincinnati, Ohio 45230
(513) 379-2923
hartmanlawfirm@fuse.net

Counsel for Relator

VERIFICATION

State of Ohio, County of Clermont) ss:

Comes now, Curt C. Hartman, counsel for Relator, having been duly cautioned and sworn, and declares that he has personal knowledge of the factual allegations above and such allegations are true and accurate.



Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, on this the 13th day of May 2024.



Amy M Melesse
Notary Public
State of Ohio
My Commission Expires
February 07, 2029

