

IN THE COURT OF APPEALS  
FOURTH APPELLATE DISTRICT OF OHIO  
PIKE COUNTY, OHIO

STATE of Ohio, *ex rel.* THE  
CINCINNATI ENQUIRER, a division  
of Gannett GP Media, Inc.  
312 Elm Street  
Cincinnati, OH 45202

Case No. *2022 CA 000915*

Original Action in Prohibition

STATE of Ohio, *ex rel.* SCRIPPS  
MEDIA, INC. D/B/A WCPO-TV  
1720 Gilbert Ave.  
Cincinnati, OH 45202

COMPLAINT FOR ALTERNATIVE  
WRIT OF PROHIBITION

STATE of Ohio, *ex rel.* COURT TV  
MEDIA, LLC D/B/A COURT TV  
Scripps Center  
312 Walnut Street  
Cincinnati, Ohio 45202

STATE of Ohio, *ex rel.* SINCLAIR  
MEDIA III, INC. D/B/A WKRC-TV  
1906 Highland Avenue  
Cincinnati, OH 45219

FILED  
COMMON PLEAS COURT  
SEP 22 2022  
JUSTIN P. BREWSTER  
PIKE COUNTY CLERK

STATE of Ohio, *ex rel.*  
OHIO/OKLAHOMA HEARST  
TELEVISION, INC. D/B/A WLWT-TV  
1700 Young Street  
Cincinnati, OH 45202

STATE of Ohio, *ex rel.*  
NEWSPATROL, INC. D/B/A SCIOTO  
VALLEY GUARDIAN  
107 E. 2nd St. Ste. 1  
Chillicothe, Ohio 45601

COURT OF APPEALS  
FILED  
SEP 22 2022

JUSTIN P. BREWSTER  
PIKE CO. CLERK

STATE of Ohio, ex rel. GRAY MEDIA :  
GROUP, INC. D/B/A WXIX-TV :  
635 West Seventh Street :  
Cincinnati, OH 45203 :

Relators, :

vs. :

HON. RANDY D. DEERING :  
Pike County Court of Common Pleas :  
100 East Second Street :  
Waverly, OH 45690 :

Respondent.

---

Relators The Cincinnati Enquirer, a division of Gannett GP Media, Inc. ("The Enquirer"), Scripps Media, Inc. d/b/a WCPO-TV ("WCPO"), Court TV Media, LLC d/b/a Court TV ("Court TV"), Sinclair Media III, Inc. d/b/a WKRC-TV ("WKRC"), Ohio/Oklahoma Hearst Television, Inc. d/b/a WLWT-TV ("WLWT"), NewsPatrol, Inc. d/b/a Scioto Valley Guardian ("SVG"), and Gray Media Group, Inc. d/b/a WXIX-TV ("WXIX") (collectively "Relators") for their Complaint for Alternative Writ of Prohibition, state as follows:

1. Relator The Enquirer is a newspaper of general circulation headquartered in Cincinnati, Ohio that covers news events in southwestern Ohio.
2. Relator WCPO is a television station in Cincinnati, Ohio that covers news events in southwestern Ohio.

3. Relator Court TV is a cable television channel that covers high profile court cases, and cases of public interest, throughout the United States and the world.

4. Relator WKRC is a television station in Cincinnati, Ohio that covers news events in southwestern Ohio.

5. Relator WLWT is a television station in Cincinnati, Ohio that covers news events in southwestern Ohio.

6. Relator SVG is a hyper-local news organization headquartered in Chillicothe, Ohio that covers news events in the Scioto Valley region.

7. Relator WXIX is a television station in Cincinnati, Ohio that covers news events in southwestern Ohio.

8. Respondent Randy D. Deering ("Respondent") is a judge of the Common Pleas Court for Pike County, Ohio ("PCCCP"), who presides over the trial in *State v. George W. Wagner, IV*, Pike County Common Pleas Case No. 2018-CR-000155 ("Wagner Trial").

9. The Wagner Trial is the State of Ohio's prosecution of George Wagner, IV for the murder of eight members of the Rhoden and Gilley families in April 2016.

10. On July 1, 2022 an order styled *Order Regarding Media Participation and General Decorum At All Proceedings Including But Not Limited to Pretrials, Motion Hearing, Voir Dire and/or Trial* ("Media Order"), issued by Respondent, was entered. A true and accurate copy of that Media Order is attached to the Complaint as Exhibit 1.

16. The Enquirer and Court TV have been allowed to broadcast and photograph the proceedings, except when a witness has objected, or they have been otherwise limited by Respondent's orders.

17. As members of the media pool required by the Media Order, Relators are entitled to, and have utilized the same photographs and video footage in their reporting.

18. During the trial, prosecutors for the State have displayed exhibits to the jury on three large monitors, which are visible by anyone in the courtroom.

19. In an order from the bench during the trial, Respondent prohibited the media, including Relators, from photographing, recording or broadcasting any exhibits displaying blood, dead bodies or minor victims ("Supplemental Media Order").

20. In practice, prosecutors for the State, ostensibly enforcing the Media Orders, have instructed members of the media, including Relators, to not photograph, record or broadcast images of certain exhibits in advance of their displaying those exhibits on the monitor for the jury to view.

21. Respondent has not made findings or otherwise conducted any proceedings in connection with the limitations imposed by the Supplemental Media Order, and enforced by prosecutors.

22. On September 16, prosecutors introduced images of bloody shoeprints, which have been presented by prosecutors as critical evidence in the case against George Wagner ("Shoeprint Exhibits").

23. Consistent with their previous practice, and the Supplemental Media Order, prosecutors instructed the media, including Relators, to refrain from photographing the Shoeprint Exhibits before displaying them on the monitor for the jury.

24. On the morning of Monday, September 19, Enquirer reporter Patricia Newberry emailed Respondent's bailiff, Jason Frazier, requesting access to the Shoeprint Exhibits so that they could be photographed by the media, and that the media, including Relators, be allowed to capture shoeprint evidence in court in the future.

25. Mr. Frazier responded shortly thereafter, informing Ms. Newberry that Respondent would not permit access to the Shoeprint Exhibits until "its [sic] been admitted into evidence" and that "[o]nce the evidence is admitted, make the request in writing to the clerk of courts office."

26. The court has not held a hearing or made any findings in connection with the restriction on photographing the Shoeprint Exhibits, or any other exhibit, or otherwise denying media representatives the ability to inspect those exhibits.

#### **COUNT I – WRIT OF PROHIBITION**

27. Relators incorporate the allegations contained in paragraphs 1 through 26, as if fully restated here.

28. The "open courts" provision of Section 16, Article I of the Ohio Constitution guarantee the public and press a coextensive right of access to criminal proceedings that

have “historically been open to the press and general public and in which public access plays a significant positive role in the functioning of the particular process in question.” *State ex rel. Beacon Journal Publ’g Co. v. Bond* (“*Bond*”), 98 Ohio St. 3d 146, 781 N.E.2d 180 (2002) (internal quotations omitted).

29. Consistent with the public and press’s right of access to court proceedings, the Ohio Supreme Court has promulgated Ohio Superintendence Rule 12(A), which provides that “[t]he judge assigned to the trial or hearing *shall* permit the broadcasting or recording by electronic means and the taking of photographs in court proceedings that are open to the public as provided by Ohio law.” (emphasis added).

30. The limitations on this right of access do not include a permit a judge to restrict the media from photographing or broadcasting exhibits displayed in open court and otherwise visible to members of the press and public in the gallery. *See* Sup.R. 12(C).

31. The Ohio Supreme Court has held that Superintendence Rule 12 is the law of the State of Ohio. *See State ex rel. Grinnell Comm’cns Corp. v. Love*, 62 Ohio St.2d 399, 401-03, 406 N.E.2d 809, 810-11 (1980). In construing that rule, the Court has explained that “[i]f the media file an appropriate request to broadcast or photograph proceedings, and the request is granted, the media rightfully expect that there will be no restrictions other than those stated by [Sup.R. 12].” *State ex rel. Dispatch Printing Co. v. Geer* (“*Geer*”), 114 Ohio St.3d 511, 2007-Ohio-4643, 873 N.E.2d 214, ¶ 16.

32. A writ of prohibition is “the appropriate action to challenge trial court orders restricting public access to pending litigation.” *State ex rel. Dispatch Printing Co. v. Louden* (“Louden”), 91 Ohio St.3d 61, 64, 741 N.E.2d 517 (2001). See also *Geer*, at ¶ 20 (granting writ of prohibition to prevent judge from entering restrictions on photographing juvenile proceedings without affording parties an opportunity to be heard).

33. Relief in prohibition is appropriate where the petitioner shows “(1) that the court against whom the writ is sought is exercising or about to exercise judicial power, (2) that the exercise of power is unauthorized by law, and (3) that denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law.” *State ex rel. State Edison Co. v. Parrott*, 73 Ohio St. 3d 705, 707, 654 N.E.2d 106 (1995).

34. Criminal trials are presumptively open to the public under Ohio law. See *State ex rel. The Repository, Div. of Thompson Newspapers, Inc. v. Unger*, 28 Ohio St.3d 418, 420, 504 N.E.2d 37, 39-40 (1986).

35. Under Rule 12(A), a presiding judge must permit members of the press to broadcast or photograph court proceedings “that are open to the public as provided by Ohio law,” unless one of the exception enumerated in Rule 12(C) apply.

36. Relators, through their designated pool representatives, made appropriate requests to broadcast and photograph the Wagner Trial, and Respondent approved those requests.

37. Nevertheless, Respondent, by the Media Order and Supplemental Media Order, has restricted Relators' abilities to broadcast, record and photograph the Shoeprint Exhibits, which are otherwise viewable by the public when they are presented to the jury in open court.

38. The restrictions on broadcasting, recording, or photographing the Shoeprint Exhibits imposed by Respondent are not authorized by the Ohio Constitution, Sup.R. 12, or any other provision of Ohio law.

39. By their Complaint, Relators seek a writ from the Court prohibiting Respondent from enforcing the restrictions set forth in the Media Order and Supplemental Media Order that prevent Relators from broadcasting, recording, or photographing exhibits displayed in open court and viewable by those present in the gallery.

40. Denial of the requested writ of prohibition will result in a deprivation of Relators' rights under the Ohio Constitution and Superintendence Rule 12, for which no other adequate remedy at law exists.

WHEREFORE, Relators seeks an alternative writ of prohibition prohibiting Respondent from enforcing the restrictions on photographing the Shoeprint Exhibits and any other exhibits displayed in open court, as imposed by the Media Order and Supplemental Order, and imposing any further restrictions on Relators' ability to broadcast, record, or photograph during the Wagner Trial that deprive Relators of the



rights of access to the Wagner Trial afforded under the Ohio Constitution and  
Superintendence Rule 12.

Respectfully submitted,

 (0086449)

*Of Counsel:*

GRAYDON HEAD & RITCHEY LLP  
312 Walnut Street, Suite 1800  
Cincinnati, OH 45202  
Phone: (513) 621-6464  
Fax: (513) 651-3836

**John C. Greiner** (0005551)  
**Darren W. Ford** (0086449)  
GRAYDON HEAD & RITCHEY LLP  
312 Walnut Street, Suite 1800  
Cincinnati, OH 45202  
Phone: (513) 629-2734  
Fax: (513) 333-4316  
Email: jgreiner@graydon.com  
dford@graydon.com

COUNSEL FOR RELATORS