

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO
SECOND APPELLATE DISTRICT

STATE OF OHIO, ex rel.	:	Case No.
CABLE NEWS NETWORK, INC.	:	
One CNN Center	:	
Atlanta, GA 30303,	:	Original Action in Mandamus
	:	
COX MEDIA GROUP OHIO, INC. d/b/a	:	
Dayton Daily News and WHIO-TV Channel 7	:	
1611 South Main Street	:	
Dayton, OH 45409,	:	
	:	
WDTN-TV2	:	
4595 South Dixie Drive	:	
Dayton, OH 45439,	:	
	:	
SCRIPPS MEDIA, INC. d/b/a	:	
WCPO-TV	:	
213 Walnut Street	:	
Cincinnati, OH 43215,	:	
	:	
THE CINCINNATI ENQUIRER,	:	
a Division of GP Media, Inc.	:	
213 Elm Street	:	
Cincinnati, OH 45202,	:	
	:	
THE NEW YORK TIMES COMPANY d/b/a	:	
The New York Times	:	
620 8th Avenue	:	
New York, NY 10018,	:	
AMERICAN BROADCASTING	:	

COMPANIES, INC d/b/a ABC News
77 West 66th Street
New York, NY 10023

and

THE ASSOCIATED PRESS
200 Liberty Street
New York, NY 10281,

Relators,

vs.

BELLBROOK-SUGARCREEK LOCAL
SCHOOLS
3757 Upper Bellbrook Road
Bellbrook, OH 45305,

and

DOUGLAS A. COZAD, Ph.D., in his official
capacity as Superintendent of Bellbrook-
Sugar creek Local Schools
3757 Upper Bellbrook Road
Bellbrook, OH 45305,

Respondents.

COMPLAINT FOR WRIT OF MANDAMUS

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Attorney for WDTN-TV2

Pursuant to the Ohio Public Records Act, R.C. 149.43, Relators Cable News Network, Inc. ("CNN"); Cox Media Group Ohio, Inc. d/b/a Dayton Daily News and WHIO-TV Channel 7 ("CMGO"); WDTN-TV2; Scripps Media, Inc. d/b/a WCPO-TV; The Cincinnati Enquirer, a Division of GP Media, Inc.; The New York Times Company d/b/a The New York Times; American Broadcasting Companies, Inc. d/b/a ABC News; and The Associated Press ("AP") (collectively, "Relators") commence this original action for a writ of mandamus against Respondents Bellbrook-Sugarcreek Local Schools and Douglas A. Cozad, Ph.D., in his official capacity as Superintendent of Bellbrook-Sugarcreek Local Schools (together, "Respondents"). A Motion for Expedited Case Schedule and Oral Argument is filed concurrently with this Complaint.

Relators seek to compel Respondents to comply with their statutory duties under R.C. 149.43(B) to promptly prepare, make available for inspection, and provide copies of records relating to Connor Betts (now deceased), the gunman who killed nine people and injured 27 others in the Oregon District of Dayton, Ohio, on August 4, 2019. In the days following that senseless attack, the public has learned that Betts displayed troubling warning signs (or "red flags") that, perhaps if acted upon sooner, may have avoided this tragedy. Will Garbe, Josh Sweigart, Hasan Karim and Avery Kreemer, *Shooter left behind decade of red flags*, Dayton Daily News, Aug. 9, 2019, at A1 (attached as Exhibit 1). Upon information and belief, Betts compiled both a "hit list" and a "rape list" while he was a student at Bellbrook High School, and was involved in other acts of violence and threats of violence before he graduated in 2013. Relators seek records about those events, as well as any other incident reports, disciplinary actions, and other related records.

In response to the August 4 attack and subsequent revelations about Betts, members of the public and government officials have engaged in a vigorous debate over whether changes in law or public policy are necessary or appropriate. Polo Sandoval, Hollie Silverman and Eric Levenson, *Ohio governor proposes a new red flag-like law after deadly Dayton shooting*, CNN, Aug. 6, 2019, <https://www.cnn.com/2019/08/06/us/dayton-ohio-shooting-tuesday/index.html> (attached as Exhibit 2). The requested records are potentially a significant contribution to this local and national conversation. Respondents' failure to comply with their legal obligations under Ohio law should not be tolerated. This community and the country at large deserve to know why this tragedy happened, what might have led to it, and what may be done to prevent future tragedies.

Relators, therefore, state and allege as follows:

JURISDICTION, VENUE AND PARTIES

1. This Court has original jurisdiction of this action pursuant to Section 2, Article IV of the Ohio Constitution and R.C. 149.43(C)(1)(b).
2. Venue lies in this Court pursuant to R.C. 149.43(C)(1)(b) because this Court is the court of appeals for the appellate district in which Respondents failed to comply with their obligations under R.C. 149.43(B).
3. Relator CNN is a 24-hour cable news network headquartered in Atlanta, Georgia. CNN operates nine news bureaus across the United States and 31 news bureaus internationally. A trusted source of news and information, CNN reaches more individuals on television, the web, and mobile devices than any other cable television news organization in the United States.

4. Relator CMGO is a fully-integrated media enterprise that operates and does business as the Dayton Daily News, a newspaper of general circulation, and WHIO-TV Channel 7 ("News Center 7"), which together provide print, broadcast and online products that serve Dayton, Ohio and surrounding communities in the Miami Valley, including the City of Bellbrook and Sugarcreek Township in Greene County, Ohio.

5. Relator WDTN-TV2 provides broadcast and online products that serve Dayton, Ohio and surrounding communities in the Miami Valley, including the City of Bellbrook and Sugarcreek Township in Greene County, Ohio.

6. Relator Scripps Media, Inc. d/b/a WCPO-TV provides broadcast and online products that serve Dayton, Ohio and surrounding communities in the Miami Valley, including the City of Bellbrook and Sugarcreek Township in Greene County, Ohio.

7. Relator The Cincinnati Enquirer provides print and online products that serve Dayton, Ohio and surrounding communities in the Miami Valley, including the City of Bellbrook and Sugarcreek Township in Greene County, Ohio.

8. Realtor The New York Times Company operates and does business as The New York Times, which provides print and online products.

9. Relator AP is an independent, not-for-profit news cooperative that provides content and online products.

10. Respondent Bellbrook-Sugarcreek Local Schools is a local school district as defined by R.C. 3311.03 serving the City of Bellbrook and Sugarcreek Township in Greene County, Ohio. The district operates Bellbrook High School. Pursuant to R.C. 149.011(A) and 149.43(A)(1), Bellbrook-Sugarcreek Local Schools is a public office subject to the Ohio Public Records Act, including but not limited to R.C. 149.43(B).

11. Relator Douglas A. Cozad, Ph.D. is Superintendent of Bellbrook-Sugarcreek Local Schools. He is a person responsible for public records kept by Bellbrook-Sugarcreek Local Schools and is subject to the Ohio Public Records Act, including but not limited to R.C. 149.43(B).

BACKGROUND OF THE DISPUTE

12. The Oregon District is a historic neighborhood in downtown Dayton that includes local bars, restaurants, and retail shops. In the very early hours of August 4, 2019, Connor Betts put on a mask and a bulletproof vest while in the Oregon District. He then opened fire with an assault-style rifle outside a crowded bar. In approximately 30 seconds, Betts killed nine people, injured 27 more, and caused countless others to take cover or run for their lives. The attack stopped when Betts was shot and killed by the immediate and heroic work of Dayton police officers who were on patrol in the area. Chief Richard S. Biehl of the Dayton Police Department confirmed Betts' death on August 4, 2019 via various public statements and updates, including a PowerPoint presentation regarding the attack, which is publicly posted to the Dayton Police Department's website at <https://www.daytonohio.gov/CivicAlerts.aspx?AID=334>.

13. Upon information and belief, including reports by the Dayton Police Department, Betts was 24 years old at the time of the attack.

14. The attack, which came hours after another mass-shooting in El Paso, Texas, captured local, national, and international attention. *E.g.*, Jay Croft and Darran Simon, *The Dayton shooter wore a mask, bulletproof vest and hearing protection as he opened fire, police chief says*, CNN, Aug. 5, 2019 <https://www.cnn.com/2019/08/04/us/dayton-ohio-active-shooter/index.html> (attached as Exhibit 3); Katie Wedell, *'This is a Miami Valley Tragedy'*, Dayton Daily News, Aug. 5, 2019, at A1 (attached as Exhibit 4); Thomas Gnau, *Trump, DeWine,*

Whaley, others react to massacre, Dayton Daily News, Aug. 5, 2019, at A6 (also attached as Exhibit 4).

15. On the evening of August 4, 2019, the Dayton community organized a candlelight vigil in the Oregon District to honor the victims of the attack. The Governor of Ohio spoke at the vigil and faced chants of, "Do something!" Anna Laffrey, *'Do Something!': mourners at Dayton vigil urge Ohio governor to act on gun control*, CNN, Aug. 5, 2019, <https://www.cnn.com/2019/08/05/politics/dayton-shooting-ohio-governor-dewine-gun-control/index.html> (attached as Exhibit 5); Cornelius Frolik and Jeremy P. Kelle, *Hudnreds flock to Dayton to be part of vigil*, Dayton Daily News, Aug. 5, 2019, at A1 (also attached as Exhibit 4). Less than two days later, on August 6, 2019, citing those chants, the Governor announced a series of legislative reforms to address gun violence and further action to increase mental health prevention, identification and treatment, including but not limited to measures to fund school services to address the social and emotional challenges faced by students and to identify risk factors and signs of mental illness in children. Max Filby and Avery Kreemer, *DeWine wants red flag laws, tougher checks*, Dayton Daily News, Aug. 7, 2019, at A1 (attached as Exhibit 6); FACT SHEET: Ohio Governor Mike DeWine's Proposals to Address Gun Violence and Increase the Prevention, Identification, and Treatment of Mental Illness (attached as Exhibit 7).

16. Upon information and belief, while a student at Bellbrook High School, Betts compiled a list of individuals he wanted to physically hurt or kill; Bellbrook-Sugarcreek Local Schools had knowledge of that list at or about the time it was made.

17. Upon information and belief, while a student at Bellbrook High School, Betts compiled a list of individuals whom he wanted to sexually assault; Bellbrook-Sugarcreek Local Schools had knowledge of that list at or about the time it was made.

18. Upon information and belief, Betts was involved in other instances of violence and threats of violence while a student attending Bellbrook-Sugarcreek Local Schools; Bellbrook-Sugarcreek Local Schools had knowledge of those incidents at or about the time they transpired.

19. Upon information and belief, Betts was suspended from Bellbrook High School, but returned to the school and graduated in 2013.

20. Following the attack in the Oregon District, Curt Devine of CNN electronically submitted the following public records request to Dr. Cozad via an online portal for Bellbrook-Sugarcreek Local Schools for records relating to Betts:

"Pursuant to the Ohio Open Records Law, Cable News Network ('CNN') requests all transcripts, behavioral records, incident reports and documented correspondence (letters/emails sent to parents/guardians or shared with law enforcement) related to this individual:

Connor S Betts; 'Connor Betts'; DOB: 1994; graduated in 2013."

21. On August 5, 2019, Will Garbe of the Dayton Daily News and News Center 7 electronically submitted a public records request to Dr. Cozad for Bellbrook-Sugarcreek Local Schools records relating to Betts. An accurate copy of Mr. Garbe's public records request is attached as Exhibit 8. Mr. Garbe specifically requested:

"1. Records individually or collectively illustrating Connor Betts' education at Bellbrook-Sugarcreek Schools, including records presently maintained under the district's records retention schedule;

2. Disciplinary records of Connor Betts."

22. On August 6, 2019, Kate Holland of ABC News electronically submitted a public records request to Bellbrook-Sugarcreek Local Schools for "all disciplinary records, attendance records, and evaluations of Connor Betts from the 2009-2010, 2010-2011, 2011-

2012, and 2012-2013 years at Bellbrook High School." An accurate copy of Ms. Holland's public records request is attached as Exhibit 9.

23. Also following the attack, Keith BieryGolick of The Cincinnati Enquirer electronically submitted a public records request to Bellbrook-Sugarcreek Local Schools for "Documents related to Connor Betts," "Any allegations of a 'hit list' created by Connor Betts," and "Any discipline imposed on Connor Betts." In addition, Ashley Karsten of WDTN-TV2; Kantele Franko of the AP; Tyson Thorp of WCPO-TV; and Mitch Smith of The New York Times electronically submitted public records requests to Bellbrook-Sugarcreek Local Schools for information materially similar to what was requested by CNN, the Dayton Daily News, News Center 7, ABC News, and The Cincinnati Enquirer.

24. On August 5, 2019, Dr. Cozad emailed a collective response to Relators' respective public records requests for records relating to Betts (together, the "Requested Records"). Dr. Cozad broadly denied Relators' public records requests and stated:

"We are in receipt of your request for student record information related to former student Connor Betts. However, the requested records are generally protected by both federal and state law. See Board Policy 8330; 20 USC 1232g; and O.R.C. 3319.321. We understand that there is a great deal of public interest in the student's records, and it has been stated that the student is no longer entitled to the protections of the student records policies and laws because he is deceased. First, we have no official documentation of the student's death at this time. In addition, while the federal government has generally interpreted FERPA to expire after a student's death, Ohio law offers broader protections for students records. Therefore, until the Board's legal counsel or a court gives us a green light to release the student's educational records, we will not be releasing anything other than directory information regarding the student. The directory information is attached. Thank you for your time and consideration in this difficult time."

On August 6, 2019, Dr. Cozad separately emailed an identically-worded denial to ABC News.

25. Accurate copies of Dr. Cozad's denial emails, quoted above, and directory information, are attached as Exhibits 9, 10, and 11. In addition to the directory information, some of the Relators also received a copy of an August 4, 2019 press release issued by Respondents, an accurate copy of which is attached as Exhibit 12. No other student records have been released by Respondents, despite Respondents' statement in their August 4 press release that, "Since [Betts] has not been a student here for over six years, we are still gathering additional information and will release it as soon as we can." (Emphasis added.)

26. Following an inquiry regarding the status of the release of all remaining student records relating to Betts, on August 6, 2019, legal counsel for Bellbrook-Sugarcreek Local Schools confirmed that Respondents would not make the Requested Records available absent a court order. An accurate copy of counsel's denial is attached as Exhibit 13.

27. To date, Respondents have not provided copies of the Requested Records to Relators, and they have not allowed Relators to inspect the Requested Records.

CAUSE OF ACTION

28. Relators incorporate the allegations of paragraphs 1 through 27 as if fully restated here.

29. The Requested Records are records as defined by R.C. 149.011(G) in that they are documents created or received by or coming under the jurisdiction of Bellbrook-Sugarcreek Local Schools, which serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office.

30. The Requested Records are kept by Bellbrook-Sugarcreek Local Schools under R.C. 149.43(A)(1).

31. The Requested Records are public records under R.C. 149.43(A)(1).

32. The release of the Requested Records is not prohibited by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g because, among other reasons, Betts is deceased, and no exception applies.

33. The release of the Requested Records is not prohibited by the Ohio Student Privacy Act, R.C. 3319.321 because, among other reasons, Betts is deceased, and no exception applies.

34. Pursuant to R.C. 149.43(B), Relators have a clear legal right to inspect and receive copies of the Requested Records, and Respondents have a corresponding clear legal duty to promptly prepare, make available for inspection and provide copies of the Requested Records.

35. Relators have no adequate alternative remedy in the ordinary course of the law.

36. Relators are respectively persons aggrieved by the failure of Respondents to promptly prepare, make available for inspection and provide copies of the Requested Records.

37. Respondents have no valid excuse for refusing to provide to Relators copies of the Requested Records and for refusing to allow Relators to inspect those records.

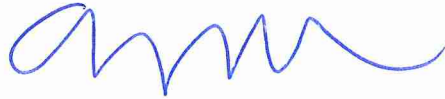
38. For commencing this action to compel Respondents to comply with their legal obligations under R.C. 149.43(B), Relators request that the Court order Respondents to promptly prepare, make available for inspection and provide copies of the Requested Records, and award statutory damages, court costs and reasonable attorney fees to Relators.

WHEREFORE, Relators request that this Court:

- a. Issue a writ of mandamus ordering and commanding Respondents to immediately make the Requested Records available for inspection and provide copies of the Requested Records to Relators;
- b. Award statutory damages to Relators pursuant to R.C. 149.43(C)(1)(b) and (C)(2);

- c. Award court costs to Relators pursuant to R.C. 149.43(C)(1)(b) and (C)(3)(a);
- d. Award reasonable attorney fees to Relators pursuant to R.C. 149.43(C)(1)(b) and (C)(3)(b); and
- e. Grant such other and further relief as this Court deems, just, proper and equitable.

Respectfully submitted,



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