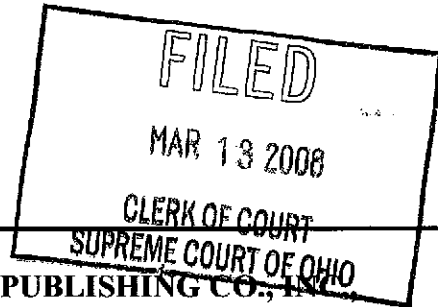


IN THE SUPREME COURT OF OHIO

State ex rel Summit County Republican)
Party Executive Committee,)
)
Relator,)
)
vs.)
)
Secretary of State Jennifer Brunner)
)
Respondent.)

Case No: 2008-0478

Original Action in Mandamus



**MEMORANDUM OF BEACON JOURNAL PUBLISHING CO., INC.
IN OPPOSITION TO MOTION TO SEAL VIDEO TRANSCRIPT**

Now comes the Beacon Journal Publishing Co., Inc., (hereafter “Newspaper” or “Beacon Journal”) by and through its Counsel, and hereby opposes any and all limits on media coverage of the legal proceedings pertaining to the Summit County Republican Party Executive Committee (“Relator”) and Secretary of State Jennifer Brunner (“Respondent”), particularly the Secretary of State’s motions to have the videotaped deposition filed under seal on behalf of Secretary Brunner.

The Respondent’s motions fail to cite any legal authority upon which the transcript may be sealed. Rather, they express concern about the Relator’s motives for wanting copies of the video transcript and suggest that Relator may use the transcript for the Republicans’ political advantage. Specifically, Respondent states: “If the Relator stands by its representation to this Court that this video will not be used for political purposes, it has no grounds on which to oppose this motion.” However, Respondent does not consider the public’s right to access court proceedings. It is on behalf of the public,

for which this Newspaper observes and reports court activity as well as elections activity, that the Beacon Journal respectfully opposes Respondent's motions to seal.

Background

This case pertains to the most public of activities in the Democratic process – voting, and how the Board of Elections in Summit County will be comprised. The Secretary of State is a publicly elected official charged with overseeing voting regulations throughout the state and its 88 counties. In this case, the Democratic Secretary is accused of improperly and arbitrarily removing a long-time Republican member of the Summit County Board of Elections, improperly and arbitrarily declining to replace him with a candidate supported by that group of Republicans, and improperly filling the position with a candidate who was hand-picked by the Summit County GOP's opposition. Now the Ohio Supreme Court is being asked to determine whether Secretary Brunner's action was legitimate and whether it should be upheld. The evidence upon which this Court relies is public and must remain open and accessible to the public in order to avoid compromising confidence in the judicial process.

Law and argument

I. Court proceedings (including evidence submitted in the record) are presumptively open.

Both the U.S. Constitution and Section 11, Article I of the Ohio Constitution require open access to Court proceedings. The Beacon Journal acknowledges that the right of access to court proceedings is not absolute, but suggests that the law is very clear: The First Amendment qualified right of access extends to evidence submitted in a court

proceeding, thereby creating a presumption of openness that may be overcome only "by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." [See *State ex rel. Beacon Journal Publishing Co. v. Bond*, (2002) 98 Ohio St. 3d. 146, and *Press-Enterprise Co. v. Superior Court* (1984), 464 U.S. 501.] The factors to be considered to determine whether sealing is appropriate include, but are not limited to, the nature and weight of the interest to be protected by the closure, the availability of a reasonable alternative that would protect the asserted interest without necessitating closure, and whether the restriction is drawn as narrowly as possible. *Globe Newspaper Co. v. Superior Court* (1982), 457 U.S. 596. If the trial court finds a sufficient interest to support closure, this interest must be " * * * articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered. * * *" *Press-Enterprise I*, 464 U.S. at 510.

It is already settled law that freedom of the press includes the right to gather, write and publish the news, and that "reporters * * * are plainly free to report whatever occurs in open court through their respective media." *Estes v. Texas* (1965), 381 U.S. 532, 541-2. See also *Times - Picayune Pub. Corp. v. Schulingkamp* (1974), 419 U.S. 1301, 1307. That is why the standard for closure is, appropriately, very rigorous. Access to court proceedings – and naturally, by extension, to evidence submitted therein – has been determined to be an essential element to our Democracy and presumptively open. As the Sixth Circuit Court of Appeals said in *Detroit Free Press v. Ashcroft* (2002) 303 F. 3d 681, "Democracies die behind closed doors."

II. The presumption of openness remains unrebutted.

Having concluded that the First Amendment guarantees a presumptive right of access to evidence submitted in a court proceeding, this Court must next address whether the presumption was rebutted in this case. In this case, while the Respondent did file two motions to require Relator to file Secretary Brunner's videotaped deposition under seal, Respondent did not offer *any* evidence to establish that media access to the video deposition of this publicly elected official would irreparably harm Secretary Brunner's right to a fair hearing before this Court or that sealing the record is *essential* to preserve higher values. Indeed, there are no concerns that a jury would be tainted or that this Court would be somehow unable to render a fair and just decision if the video transcript were made public. Rather, Respondent asserts that the videotape should be sealed because the opposing party may use it to his political advantage (and to the Secretary's political disadvantage).

While the Newspaper is not unmindful of the Secretary's concern, there are other ways to protect Respondent's interest on that front, all of which would be a far less invasive abrogation of the Newspaper's First Amendment rights to gather and report the news. In order to prevail on her motion, Respondent must present evidence to meet the requirements set out by the U.S. Supreme Court in *Press Enterprise I*, as stated above. This she is simply unable to do.

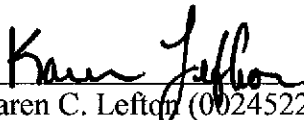
That one member of the public (in this case, the Relator) may misuse the information is not sufficient justification to deny the information to the rest of the public. "[T]o deny members of the press access to public information solely because they have

the ability to disseminate it would silence the most important critics of government activity." *Kallstrom v. City of Columbus*, 165 F. Supp. 2d 686, 688 (S.D. Ohio 2001).

Certainly the public has an overriding interest in knowing what is going on in its community, including the administration of its own County Board of Elections. The press attends Court proceedings and reviews Court documents in the public's stead because each member of the public does not have the time to read all the filings and attend all the proceedings on his own, even though he has Constitutional rights to do so. Both the state and federal constitutions require courts to be open. That records may be filed which are embarrassing to one party or another is not determinative of whether they should be sealed. Rather, it is whether having open access would in some significant, measurable way impair the administration of justice. In this case, no such result was even alleged. We must, instead, be ever-mindful of the admonitions of Judge Hurd, concurring in *E. W. Scripps Co. v. Fulton*, (1955) 100 Ohio App. 157, 178: "Crime and corruption grow and thrive in darkness and secrecy. Justice thrives in the open sunlight of day. If we deny to the public and press access to courts of justice, we foster a system of jurisprudence heretofore unknown in the history of Ohio."

Therefore, the Beacon Journal respectfully requests that Respondent's Motions to Require Relator to File Videotaped Deposition Under Seal be denied.

Respectfully submitted,



Karen C. Leftor (0024522)
Attorney for the Beacon Journal Publishing
Co., Inc.,

44 E. Exchange St.
Akron, Ohio 44328
Phone: 330-996-3185
Fax: 330-996-3678
klefton@thebeaconjournal.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been faxed and mailed by regular U.S. mail on this 13th day of March, 2008, to:

Timothy J. Grendell
Grendell & Simon Co. LPA
6640 Harris Road
Broadview Heights, Ohio 44147
440-746-9604 – fax

Attorney for Relator

Richard N. Coglianesse
Counsel of Record
Damian Sikora
Pearl Chin
Michael Schuler
Assistant Attorneys General
Constitutional Office Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
614-728-7592 – fax

Attorneys for Secretary of State Jennifer Brunner



Karen C. Lefton