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To: Lorain County Clerk of Courts Appellate Division (Civil)
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 Phone: (440) 329-5763
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Re: Gibson Bros., Inc., et al vs. Oberlin College, et al.
 CASE NO. 20CA011648

Document Title: Appellant WEWS-TV's Response to Magistrate's August 18, 2020 Order
From: Melissa D. Bertke (0080567)
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**COURT OF APPEALS OF OHIO
NINTH APPELLATE DISTRICT
LORAIN COUNTY, OHIO**

GIBSON BROS., INC, et al.,)	
)	CASE NO. 20CA011648
Plaintiffs-Appellees,)	
)	
v.)	
)	
OBERLIN COLLEGE, et al.)	
)	
Defendants,)	APPELLANT WEWS-TV'S
)	RESPONSE TO MAGISTRATE'S
and)	AUGUST 18, 2020 ORDER
)	
WEWS-TV)	
)	
Appellant.)	

In accordance with the Magistrate’s August 18, 2020 Order, Appellant WEWS-TV (“WEWS”) respectfully submits this response to Plaintiffs-Appellees’ Motion for Leave to Address Misinterpretation of Case Law and Brief Regarding *State ex rel. Richfield v. Laria* (“Appellees’ Br.”).

Plaintiffs-Appellees Gibson Bros., Inc., et al. erroneously contend that WEWS, in its Statement in Response to Magistrate’s July 20, 2020 Order (“WEWS Statement”), misinterpret the Ohio Supreme Court’s decision in *State ex rel. Richfield v. Laria*, 2014-Ohio-243, 138 Ohio St. 3d 168, 4 N.E.3d 1040. Appellees’ Br. at 5. Specifically, Plaintiffs-Appellees imply that WEWS mischaracterized *Laria* as involving an appeal of a lower court’s denial of a motion to unseal judicial records pursuant to the Ohio Rules of Superintendence. *Id.* WEWS made no such representation. Rather, WEWS correctly cited to *Laria* for the proposition that the Ohio Supreme Court has denied requests for mandamus relief when an adequate remedy in the

ordinary course of law, such as a direct appeal, is available. WEWS Statement at 2. Indeed, it is Plaintiffs-Appellees who misrepresent case law by erroneously asserting that the Ohio Supreme Court “confirmed” in *State ex rel. Cincinnati Enquirer v. Lyons*, 2014-Ohio-2354, 140 Ohio St. 3d 714 N.E.3d 989, that “an action in mandamus is the *sole* remedy for the denial of access to court records under Sup.R. 44-47,” Appellees’ Br. at 4 (emphasis in original). The Court in *Lyons* made no such statement.

ARGUMENT

The Ohio Supreme Court’s decision in *Laria* is illustrative of the principle articulated in *Lyons*, specifically that “[t]o be entitled to extraordinary relief in mandamus, [a party] must establish a clear legal right to the sealed records, a clear legal duty on the part of the court to unseal them, and *the lack of an adequate remedy in the ordinary course of law.*” *Lyons*, 2014-Ohio-2354, ¶ 11 (emphasis added). In *Laria*, the Village of Richfield petitioned the Akron Municipal Court to unseal certain criminal records pursuant to R.C. 2953.53(D), which provides for the use of sealed records in defense of a civil action arising out of a law enforcement officer’s involvement in an underlying case. *State ex rel. Richfield v. Laria*, 2014-Ohio-243, ¶ 3, 138 Ohio St. 3d 168, 169, 4 N.E.3d 1040, 1042. In addition to asserting a right of access to the records pursuant to R.C. 2953.53(D), Richfield also argued that the court had not followed the proper procedural requirements for sealing the records. *Id.* After a closed hearing and in-camera inspection, the court denied Richfield’s motion to unseal, with limited exceptions, finding that Richfield had not met the criteria to unseal the records under R.C. 2953.53(D). *Id.* at ¶ 4.

Richfield then submitted a request to the clerk of courts seeking access to records “that were the subject of the judge’s entry denying the motion to unseal” and contending that, because the records were never properly sealed, they were public documents under the Ohio Public

Records Act, R.C. 149.43. *Id.* at ¶ 5. In response to a reply from the clerk’s office that no such responsive public records existed, Richfield filed an action in mandamus with the Ohio Supreme Court, seeking an order compelling the municipal court and the clerk to produce the records sought by Richfield pursuant to the Public Records Act. *Id.* at ¶¶ 1, 5–6.

Because Richfield “improperly requested court records under the Public Records Act, R.C. 149.43, rather than under Sup.R. 44 through 47, which control access to court records,” the *Laria* court denied Richfield’s request for a writ of mandamus. *Id.* at ¶ 2. However, it went on to explain that “even if Richfield had requested the records under the rules [of Superintendence],” the court would have denied the writ, as Richfield “could have appealed the trial court’s denial of its motion and the refusal to unseal the records.” *Id.* Thus, because “Richfield had an adequate remedy at law” which it had not pursued, the court found that mandamus relief was not appropriate. *Id.* at ¶¶ 9–11.

WEWS, like Richfield, has an adequate remedy at law: specifically, direct appeal of the Lorain County Court of Common Pleas’ Entry and Ruling on Non-Parties’ Motion for Access to Sealed Case Document. Contrary to Plaintiffs-Appellees’ erroneous assertion, the fact that WEWS and Richfield filed motions to unseal under different statutes does not strip this court of jurisdiction over WEWS’s appeal. *See Gibson. Br.* at 5. Plaintiffs-Appellees misrepresent the Ohio Supreme Court’s holding in *Lions* as purportedly “confirm[ing] that an action in mandamus is the *sole* remedy for the denial of access to court records under Sup.R. 44-47.” *Gibson. Br.* at 4 (emphasis in original). But the *Lions* decision does not state that mandamus is the “sole” remedy. Rather, *Lions* holds that while “[m]andamus is the appropriate remedy to compel compliance with the Public Records Act, R.C. 149.43(C)(1), and to enforce the provisions of the Superintendence Rules granting public access to court records . . . [t]o be

entitled to extraordinary relief in mandamus, [a party] must establish a clear legal right to the sealed records, a clear legal duty on the part of the court to unseal them, and the lack of an adequate remedy in the ordinary course of law.” *Lyons*, 2014-Ohio-2354, ¶ 11 (citing *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 2012-Ohio-3328, 974 N.E.2d 89, ¶ 22). Here, WEWS has an adequate remedy in the ordinary course of law. And unlike WEWS, the petitioner in *Lyons* was not seeking mandamus relief as a result of a denial of a motion by the petitioner to unseal judicial records; rather, it sought mandamus as an original action. *See Lyons*, 2014-Ohio-2354, ¶¶ 1–10.

CONCLUSION

WEWS properly cited to *Laria* for the proposition that the Ohio Supreme Court has denied requests for mandamus relief when an adequate remedy, such as a direct appeal, exists in the ordinary course of law. WEWS Statement at 2. Because WEWS has such an adequate remedy, it pursued a direct appeal to this Court. However, should the Court conclude that direct appeal is unavailable, WEWS would not have an adequate remedy at law, and will file a request for a writ of mandamus.

Dated: September 1, 2020

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on September 1, 2020, via email, pursuant to App.R. 13(C)(6) of the Appellate Rules of Civil Procedure, upon the following:

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