REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

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November 6, 2013

The Hon. Claude D. Neilson
Shelby County Courthouse
First Floor, Room 128
112 North Main Street
P.O. Box 1810
Columbiana, AL 35051

Re: Civil action 2013-236 (Riley v. Shuler);
Civil action 2013-237 (Duke v. Shuler)

Dear Judge Neilson:

The Reporters Committee for Freedom of the Press is concerned that this Court has placed an unconstitutional prior restraint on respondents Roger and Carol Shuler, and sealed all of the records in the cases that Robert R. Riley, Jr., and Liberty Duke brought against them. We are writing to request that you reconsider these decisions.

The Reporters Committee was founded in 1970 to provide free legal advice to protect the First Amendment rights of journalists. We are extremely concerned that a reporter, Mr. Shuler, has been in jail for two weeks for violating what appears to be an unconstitutional prior restraint. We do not take a position on the merits of the underlying suit, but are concerned with the fact that he is now in jail over material he published.

This Court's injunction demanding that articles be removed from a web site and that no further information be posted relating to the plaintiffs functions as a prior restraint because it bars Mr. Shuler from speaking on issues of public concern. A more limited order barring the reposting of statements that have been deemed libelous after a full adjudication of the merits would not raise the same concerns.

The Supreme Court has never upheld a prior restraint, or a government prohibition on speech. In *Nebraska Press Association v. Stuart*, it found these bans on speech presumptively unconstitutional and called them "the most serious and the least tolerable infringement on First Amendment rights." 427 U.S. 539, 558-59 (1976). *See also Near v. State of Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931) (calling prior restraint "the essence of censorship.") The Supreme Court has speculated that prior restraints may only be allowed to prevent disclosure of information that would provide troop locations in wartime or "set in motion a nuclear holocaust." *Id*. at 716; *New*

York Times v. U.S., 403 U.S. 713, 726 (1971). The stories on Mr. Shuler's website fall far short of those extremely high thresholds.

This Court, in granting the petitioners' request for a preliminary injunction found the articles in question to include defamatory statements. However, the process by which the court made that determination seems problematic. It appears that there was no full adjudication on the merits or default judgment ever issued against the Shulers on the defamation claim. As such, the temporary restraining order and preliminary injunctions amount to unconstitutional prior restraints. There may be facts that support the Shulers' ultimately needing to take down the articles, but that decision would need to be made after a judgment on the defamation claim is issued. Otherwise, the procedure runs afoul of the First Amendment.

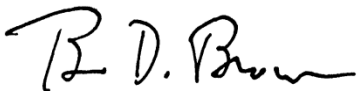
We also are troubled by this Court's decision to seal all records in these cases. The Supreme Court has recognized that the public has a right to inspect judicial records and documents. *Nixon v. Warner Communications, Inc*., 435 U.S. 589, 597 (1978). Along those lines, Alabama has long found that the public has a right to inspect court records. *Brewer v. Watson*, 61 Ala. 310, 311 (1878). *Ex parte Balogun*, 516 So. 2d 606, 612 (Ala. 1987). Alabama has held that limitations of the public's right to inspect "must be strictly construed and must be applied only in those cases where it is readily apparent that disclosure will result in undue harm or embarrassment to an individual, or where the public interest will clearly be adversely affected, when weighed against the public policy considerations suggesting disclosure." *Chambers v. Birmingham News Co*., 552 So. 2d 854, 856 (Ala. 1989).

Given this presumption of openness, this Court was wrong to seal all records in the case. If the petitioners are able to prove that *some* parts of the material met the above exception, this Court should then redact only those small portions of the case filings that could potentially cause harm. Sealing the records makes it impossible for the public to hold the government accountable. One of the petitioners in this case has been mentioned as a potential candidate for U.S. Congress. Voters have a right to have at least some knowledge about lawsuits in which he is involved. Openness also is necessary so that the public can ensure that the judicial system is acting in a constitutional manner. Moreover, the sealings violate Mr. Shuler's rights because lack of knowledge about the specifics of the case – and the circumstances of the unconstitutional prior restraint – seem to be impeding his ability to get legal assistance.

Lastly, sealing all records in this case has the effect of closing all proceedings because the public has no knowledge about happenings in the case. The Supreme Court has found that, under the First Amendment, both criminal and civil trials should be presumptively open. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n.17 (1980) (plurality opinion). Excessive secrecy, the Supreme Court has found, limits truthful reporting on matters of public concern, and, therefore, implicates the highest First Amendment values. See, e.g., *Globe Newspaper Co. v. Superior Court for Norfolk Cnty*., 457 U.S. 596, 604-05 (1982); *Richmond Newspapers, Inc. v, Va.*, 448 U.S. at 586-87.

For the above mentioned reasons, we request that you rescind the civil contempt order entered against Mr. Shuler for violating the unconstitutional prior restraint and unseal the court records.

Sincerely,



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