No. _____

In The
Supreme Court of the United States

MATTHEW FOX, PROSECUTING ATTORNEY, MERCER COUNTY, OHIO JEFF GREY, SHERIFF, MERCER COUNTY, OHIO AND J.K., THE CRIME VICTIM,

Petitioners,

v.

CHARLES A. SUMMERS,

Respondent.

On Petition For A Writ Of Certiorari To The Ohio Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioners Fox and Grey are public officials whose offices maintain records of the graphic details of sex crimes committed against Petitioner J.K., a minor crime victim. Despite Sixth Circuit precedent establishing constitutional protection for these records, the Ohio Supreme Court has ordered Petitioners Fox and Grey to release all of them to Respondent and to do so without redaction. The question presented is:

Whether the Fourteenth Amendment Due Process right to informational privacy protects information of a personal, sexual nature related to one's victimization from government dissemination absent a compelling state interest, a question as to which the courts of appeals are in conflict.

RELATED CASES

- *State ex rel. Summers v. Fox*, No. 2018-0959, Ohio Supreme Court. Judgment entered Dec. 10, 2020.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully seek a writ of certiorari to review the judgment of the Ohio Supreme Court.

OPINION BELOW

The opinion below (Pet.App. 1) is published at Slip Opinion, 2020-Ohio-5585.

JURISDICTION

The Ohio Supreme Court entered judgment on December 10, 2020, and denied a timely motion for rehearing on December 30, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A minor victim of sex crimes, Petitioner J.K., asserted her Fourteenth Amendment Due Process right to informational privacy to attempt to prevent Respondent Charles A. Summers, the father of her convicted offender, Christopher Summers, from obtaining records containing the graphic details of the sex crimes Respondent's son perpetrated against her and posting those same records on the internet in an effort to harass and embarrass Petitioner J.K. These records are held by the Mercer County, Ohio prosecutor and sheriff, Petitioners Fox and Grey.

Christopher Summers was charged with forty-seven counts, including rape, sexual battery, felonious assault, attempted sexual battery, and gross sexual imposition, for crimes committed against Petitioner J.K. in Mercer County Common Pleas Court Case No. 13-CRM-030. These charges stem from Christopher Summers' conduct towards Petitioner J.K. when he was her schoolteacher and athletic coach. Christopher Summers agreed to a negotiated plea agreement wherein he pleaded guilty to eight counts of sexual battery, each being a felony of the third degree.[1] As a result of these convictions, Christopher Summers was sentenced to twenty years in prison. Christopher Summers has

[1] Under Ohio law, a person is prohibited from engaging in sexual conduct with another when the other person is a minor attending a school supervised by the State Board of Education and the offender is a teacher, administrator, coach or other person in authority who is employed by that school. OHIO REV. CODE ANN. § 2907.03(A)(7) (LexisNexis 2021).

unsuccessfully challenged his sentence through appeals and in habeas proceedings. *See State v. Summers*, 140 Ohio St. 3d 1506, 2014-Ohio-5098, 19 N.E.3d 923 (2014).

Following their son's conviction, Respondent and his wife (Christopher Summers' parents) immediately set up the Facebook page "Justice for Chris," which they have used repeatedly to attack and blame J.K. for their son's crimes and incarceration. Justice for Chris, @justiceforchrissummers, Facebook (accessed Jan. 20, 2021), https://www.facebook.com/justiceforchrissummers [https://perma.cc/VJ5D-HE6J]. Posting J.K.'s photograph on this Facebook page, Respondent and his wife have called J.K. a liar, posted graphic details of the sexual assaults Christopher Summers committed against J.K., released text messages between Christopher and J.K. from the time of the crimes, and posted videos of witness interviews, provided to their son through the criminal discovery process only for the limited and express purposes of preparing his criminal defense. The harassment and intimidation perpetrated by Respondent and his wife are so severe that both were charged with criminal offenses for this conduct. *State v. Charles Summers*, Celina Municipal Court Case No. 19CRB00411.

In February of 2017, Respondent made a public records request of the Mercer County Prosecutor's Office. In that correspondence, Respondent requested that the Mercer County Prosecutor's Office provide a response to the following request, in pertinent part:

> 1. Any and all video recordings of interviews with the accuser and any other witnesses that were interviewed in the case of State of OH vs. Christopher A. Summers 12-CRM-129 and 13-CRM-030
>
> 2. Any and all audio recording of interviews or telephone calls made with an accuser or potential witness in the case of Christopher A. Summers 12-CRM-129 and 13-CRM-030 on or about November 5, 2012
>
> 3. Any and all notes made by the prosecutor or a member of his staff or the sheriff's detectives during interviews with the accuser or any potential witnesses in the case of State of OH vs. Christopher A. Summers 12-CRM-129 and 13-CRM-030. . . .
>
> 5. Recordings of any phone calls made to the Sheriff's Office or 9-1-1 from the mother of the accuser on or about November 5, 2012. Also, any other recordings of phone calls to central dispatch or sheriff's office concerning State of OH vs. Christopher A. Summers 12-CRM-129 and 13-CRM-030. . . .
>
> 9. Any statements (written or recorded) made by the accuser [J.K.] to any member of the Sheriff's Dept or the Prosecutor's Office.

Some of the records Respondent requested contain personal, graphic details of J.K.'s life, including information of a sensitive and sexual nature. By correspondence dated February 28, 2017, Petitioner Fox provided Respondent with detailed reasons for denying his request and invited Respondent to contact his

office with any questions. In a subsequent request to the Mercer County Sheriff's Office, Respondent repeated all of the requests listed above. Petitioner Fox, this time in his role as counsel for the Mercer County Sheriff's Office, again denied this request, for the same reasons he denied the initial request to the Mercer County Prosecutor's Office. In both instances, Petitioner Fox told Respondent that the records were denied, in part, due to Petitioner J.K.'s federal right to informational privacy.

Respondent subsequently invoked the Ohio Supreme Court's original jurisdiction to hear complaints in mandamus, seeking the issuance of a writ of mandamus compelling Petitioners Fox and Grey to turn over the requested records. The Ohio Supreme Court ordered the case to mediation, during which time some records—not germane to this Petition—were released to Respondent.

Petitioner J.K. retained counsel to intervene in the case and assert her Fourteenth Amendment Due Process right to informational privacy. J.K. was permitted to brief the Ohio Supreme Court concerning her constitutional right to informational privacy. Notably, Petitioners Fox and Grey also asserted J.K.'s constitutional privacy right throughout briefing.

The Ohio Supreme Court decided that it need not analyze Petitioner J.K.'s Fourteenth Amendment informational privacy right. *See State ex rel. Summers v. Fox*, Slip Opinion No. 2020-Ohio-5585, ¶ 41. Specifically, the court stated: "*Bloch* is not a public-records

case and it did not create the categorical exception to disclosure under federal law required by R.C. 149.43(A)(1)(v)." *Id.* Instead, the court held that the public records act contained no bar to release of records containing the graphic details of the sex crimes perpetrated against Petitioner J.K.

Subsequently, Petitioners timely moved the Ohio Supreme Court for reconsideration, which was denied on December 30, 2020.

REASONS FOR GRANTING THE PETITION

The Ohio Supreme Court's decision in this matter created a conflict with well-established Sixth Circuit precedent regarding the Fourteenth Amendment's Due Process right to informational privacy derived from this Court's precedent in *Paul v. Davis*, 424 U.S. 693 (1976), *Whalen v. Roe*, 429 U.S. 589 (1977), and *Nixon v. Adm'r of General Servs.*, 433 U.S. 425 (1977). In addition, the decision has brought into stark relief the circuit split regarding the existence and application of the right to informational privacy. This circuit split has existed since this Court's decisions in *Whalen* and *Nixon*, and was exacerbated by conflicting interpretations of this Court's decision in *NASA v. Nelson*, 562 U.S. 134 (2011). This issue has percolated in the circuit and district courts for decades, yet a lack of uniformity continues to plague the courts.

The Ohio Supreme Court's decision presents an important and recurring matter of constitutional

interpretation having a profound impact on crime victims and public officials throughout the state of Ohio and the country. Review by this Court is critical to ensure that the constitutional right to informational privacy of crime victims is protected.

I. The Ohio Supreme Court recently decided an important and recurring constitutional privacy matter in a manner that conflicts with the longstanding precedent of the Sixth Circuit.

This case presents a conflict between the Ohio Supreme Court and the Sixth Circuit.

While some circuits interpreted this Court's decisions in *Whalen* and *Nixon* to provide a rather expansive right to informational privacy, the Sixth Circuit's recognition of a right to informational privacy has been grounded in a different case from this Court, *Paul v. Davis*, 424 U.S. 693 (1976). *See J.P. v. Desanti*, 653 F.2d 1080, 1088-89 (6th Cir. 1981).

In *Desanti*, the Sixth Circuit stated: "We do not view the discussion of confidentiality in *Whalen v. Roe* as overruling *Paul v. Davis* and creating a constitutional right to have all government action weighed against the resulting breach of confidentiality." *Id.* at 1089. It concluded that informational privacy rights will only be recognized as of a constitutional dimension in the Sixth Circuit if the rights are " 'fundamental' or 'implicit in the concept of ordered liberty.' " *Id.* at 1088 (citing *Paul*, 424 U.S. at 713).

In *Bloch v. Ribar*, the Sixth Circuit first analyzed whether the public release of the details of sex crimes violates rights that "implicate either fundamental rights or rights 'implicit in the concept of ordered liberty.'" *Bloch v. Ribar*, 156 F.3d 673, 685 (6th Cir. 1998) (quoting *DeSanti*, 653 F.2d at 1090.). Answering in the affirmative, the court stated: "Our sexuality and choices about sex, in turn, are interests of an intimate nature which define significant portions of our personhood. Publically revealing information regarding these interests exposes an aspect of our lives that we regard as highly personal and private." *Id.* The Sixth Circuit held that "a rape victim has a fundamental right of privacy in preventing government officials from gratuitously and unnecessarily releasing the intimate details of a rape where no penalogical [sic] purpose is being served." *Id.* at 686.

Having found that the case implicated a fundamental right, the Sixth Circuit went on to balance the victim's interest in preventing dissemination of the information with the state's interest in disseminating it. *See id.* The court held that, absent a compelling government interest in the release of the information, the victim's privacy interest must prevail. *Id.* ("Where state action infringes upon a fundamental right, such action will be upheld under the substantive due process component of the Fourteenth Amendment only where the governmental action furthers a compelling state interest." (quoting *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1064 (6th Cir. 1998))). The court stated that details released in trial or released as necessary

to apprehend a suspect may constitute compelling state interests. *See Bloch*, 156 F.3d at 686. The Sixth Circuit concluded by putting public officials "on notice that such a privacy right exists." *Id.* at 687.

Subsequent to *Bloch*, the Sixth Circuit continued to hold that the informational right to privacy attaches to information of a personal, sexual nature. *See Lambert v. Hartman*, 517 F.3d 433, 440 (6th Cir. 2008) ("[T]his court has recognized an informational-privacy interest of constitutional dimension in only two instances: (1) where the release of personal information could lead to bodily harm (*Kallstrom*), and (2) where the information released was of a sexual, personal, and humiliating nature (*Bloch*)."); *see also Lee v. City of Columbus*, 636 F.3d 245, 261 (6th Cir. 2011) (characterizing *Bloch* as protecting "the interest in shielding sexuality and choices about sex"). In *Lambert*, the Sixth Circuit said:

> The clear principle emerging from *Bloch* is that the sheriff's publication of the details of Bloch's rape implicated her right to be free from governmental intrusion into matters touching on sexuality and family life, and that to permit such an intrusion would be to strip away the very essence of her personhood.

Lambert, 517 F.3d at 441.

In this case, the Ohio Supreme Court decided that it need not analyze Petitioner J.K.'s Fourteenth Amendment informational privacy right. *See State ex rel. Summers v. Fox*, Slip Opinion No. 2020-Ohio-5585,

¶ 41. Specifically, the court stated: "*Bloch* is not a public-records case and it did not create the categorical exception to disclosure under federal law required by R.C. 149.43(A)(1)(v)." *Id.* The Ohio Supreme Court's refusal to acknowledge, analyze, and weigh Petitioner J.K.'s right to informational privacy is in conflict with Sixth Circuit precedent.

II. The Ohio Supreme Court decision has brought into stark relief the circuit split regarding the Fourteenth Amendment right to informational privacy.

Following this Court's decision in *Whalen*, nearly every circuit court embraced the existence of some form of the right to informational privacy. *See*, *e.g.*, *Vega-Rodriquez v. Puerto Rico Telephone Co.*, 110 F.3d 174, 182-83 (1st Cir. 1997); *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999); *Sterling v. Borough of Minersville*, 232 F.3d 190, 195 (3d Cir. 2000); *Taylor v. Best*, 746 F.2d 220, 225 (4th Cir. 1984); *Zaffuto v. City of Hammond*, 308 F.3d 485, 489 (5th Cir. 2002); *Flaskamp v. Dearborn Public Schools*, 385 F.3d 935, 945 (6th Cir. 2004); *Denius v. Dunlap*, 209 F.3d 944, 955 (7th Cir. 2000); *Cooksey v. Boyer*, 289 F.3d 513, 515-16 (8th Cir. 2002); *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 551 (9th Cir. 2004); *Anderson v. Blake*, 469 F.3d 910, 914 (10th Cir. 2006); *James v. City of Douglas*, 941 F.3d 1539, 1543 (11th Cir. 1991). Prior to this Court's 2011 *Nelson* decision, "[t]hese courts ha[d] created a conceptually diverse but relatively stable framework for evaluating informational privacy claims." Helen L. Gilbert,

Minors' Constitutional Right to Informational Privacy, 74 U. CHI. L. REV. 1375, 1375 (2007).

However, this Court's decision in *Nelson* caused, to date, the First, Eighth and Tenth Circuit Courts to upend their prior precedent, creating uncertainty. *See Dillard v. O'Kelley*, 961 F.3d 1048, 1054 (8th Cir. 2020); *see also Nunes v. Mass. Dep't of Corr.*, 766 F.3d 136, 143 (1st Cir. 2014).

In a case substantially similar to this one, the Eighth Circuit eschewed its longstanding approach of applying the informational privacy right to the release of government records of a sexual nature. *Dillard*, 961 F.3d at 1055. In *Dillard*, a sheriff's office released redacted records which included the details of sexual assaults committed against children. *See id.* at 1050. While the records were redacted, it was still possible to ascertain the identities of the minor victims. *See id.* at 1051. The Eighth Circuit acknowledged that, prior to the decision in *Nelson*, it embraced a "constitutional right to the privacy of medical, sexual, financial, and other categories of highly personal information, grounded in the Fourteenth Amendment right to substantive due process." *Id.* at 1053.

In refusing to find that the plaintiffs' right to informational privacy was "clearly established," the Eighth Circuit stated: "Although *Nelson* left the issue unresolved, it confirmed that our court and other circuits erred in reading inconclusive statements in *Whalen* and *Nixon* as Supreme Court recognition of a

substantive due process right to informational privacy." *Id.* at 1054.

Prior to *Nelson*, the Tenth Circuit staunchly protected victims' rights to informational privacy. *See Anderson v. Blake*, 469 F.3d 910 (10th Cir. 2006). In *Anderson*, the Tenth Circuit held that a crime victim had a right to informational privacy in a video depicting her rape. *Id.* at 914. The court went so far as to say that even "the inevitable disclosure of the video at trial does not necessarily justify its release at the time and in the manner it was disclosed." *Id.* at 916. Like the Sixth Circuit, the Tenth Circuit formerly required "a compelling interest and . . . the least intrusive means of disclosure" to outweigh a victim's privacy interest. *Id.* at 915.

The Tenth Circuit has also abandoned its prior precedent in the wake of *Nelson*. *See Leiser v. Moore*, 903 F.3d 1137, 1141 (10th Cir. 2018). In *Leiser*, the Tenth Circuit acknowledged that "this circuit has held that government disclosure of an individual's personal medical information violated the Constitution." *Id.* at 1140. However, following this Court's decision in *Nelson*, the Tenth Circuit reversed course, stating: "[O]ur precedents relied on a reasonable misreading of two Supreme Court opinions as establishing a right to informational privacy. More recently, however, the Supreme Court has made clear that the existence of such a right is an open question. . . ." *Id.* at 1141.

As to *Nelson*, the Tenth Circuit wondered: "Why 'assume' something if it had already been resolved by

precedent? There would be no need to merely assume the proposition, and there would be nothing to reserve decision on, if the Supreme Court had previously held that the Constitution protected such privacy rights." *Id.* at 1144. Therefore, upending years of precedent from its own circuit, the Tenth Circuit held that "clearly established law" did not support the plaintiff's claim that the release of her medical information was constitutionally infirm. *See id.* at 1145.

In contrast, the Sixth Circuit has not wavered in its interpretations of *Paul*, *Whalen*, and *Nixon*. *See Lee v. City of Columbus*, 636 F.3d 245, n.8 (6th Cir. 2011) (stating, regarding *Nelson*, "Thus, the Court has not provided us with any reason to take the opportunity to revisit our past precedents on this matter."); *Wurzelbacher v. Jones-Kelley*, 675 F.3d 580, 586 (6th Cir. 2012). Citing this Court's decision in *Nelson* in which this Court "assumed without deciding" that the right to informational privacy exists, the Sixth Circuit has stated: "It is common practice to assume without deciding an issue—even a constitutional one. . . ." *Griffith v. Franklin Cty.*, 975 F.3d 554, n.5 (6th Cir. 2020).

Like the Sixth Circuit, other circuits have, thus far, maintained that the right to informational privacy continues to exist after *Nelson*. *See Matson v. Bd. of Educ. of the City Sch. Dist. of N.Y.*, 631 F.3d 57, 63 (2d Cir. 2011); *accord Hancock v. Cty. of Rensselaer*, 882 F.3d 58, 65 (2d Cir. 2018) ("The Fourteenth Amendment's due process clause thus protects individuals in this circuit from arbitrary intrusions into their medical

records."); *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir. 2000) ("We thus carefully guard one's right to privacy against unwarranted government intrusion."); *accord Malleus v. George*, 641 F.3d 560, 565 (3d Cir. 2011) (deeming sexual information, medical information, and some financial information to be constitutionally protected by the informational right to privacy); *Wyatt v. Fletcher*, 718 F.3d 496, 509 (5th Cir. 2013) (stating "individuals generally can have a privacy interest in some personal 'sexual matters,' a broad general proposition with which we do not take issue."); *Chasensky v. Walker*, 740 F.3d 1088, 1096 (7th Cir. 2014) (stating the Seventh Circuit has recognized "a constitutional right to the privacy of medical, sexual, financial, and perhaps other categories of highly personal information"); *Endy v. Cty. of L.A.*, 975 F.3d 757, 768 (9th Cir. 2020) (acknowledging that the federal constitution recognizes the right to informational privacy); *see also Thorne v. El Segundo*, 726 F.2d 459, 468 (9th Cir. 1983) ("The interests Thorne raises in the privacy of her sexual activities are within the zone protected by the constitution.").

This marked change is particularly problematic for crime victims whose victimization occurs in the First, Eighth, or Tenth Circuits rather than the Sixth Circuit. The circuit split on this issue is significant and requires review from this Court.

III. The erroneous decision of the Ohio Supreme Court has far-reaching adverse consequences for crime victims and public officials.

a. The Ohio Supreme Court erred in its decision.

Ohio law prohibits public officials like Petitioners Fox and Grey from releasing records held by their offices if "the release. . . . is prohibited by state or federal law." OHIO REV. CODE ANN. § 149.43(A)(1)(v) (LexisNexis 2020). Pursuant to this prohibition, Petitioners Fox and Grey refused to release records of the graphic details of the sex crimes committed against Petitioner J.K, the minor crime victim. These records fall squarely within the interpretation of the constitutional right to informational privacy adopted by the Sixth Circuit in *Bloch v. Ribar* and its progeny. Like this case, *Bloch* involved records of sex crimes. *Bloch*, 156 F.3d at 676. Unlike the respondents before this Court in prior cases analyzing the constitutional right to informational privacy, like *Whalen* and *Nelson*, Sheriff Ribar not only collected personal, sexual information, he also publicly disseminated it. *Compare Whalen v. Roe*, 429 U.S. 589 (1977) and *NASA v. Nelson*, 562 U.S. 134 (2011), with *Bloch*, 156 F.3d at 676. Respondent here is asking Petitioners Fox and Grey to disseminate the personal, sexual information of Petitioner J.K. Critically, this case is not simply about government collection of protected information, but about the public dissemination of this information.

With the growing power of the Internet and social media to wholly and irrevocably damage a victim from release of this type of personal, sexual information, a clarification of this right and its boundaries from this Court is timely and necessary.

In deciding this case, the Ohio Supreme Court failed to apply clearly established Sixth Circuit precedent when it failed to analyze Petitioner J.K.'s informational privacy rights or weigh these rights against any compelling state interest in dissemination pursuant to public records law. The Ohio Supreme Court characterized *Bloch* as "not a public records case" and summarily dismissed Petitioners' arguments that the constitutional right to informational privacy protected personal, sexual details of the sex crimes perpetrated against Petitioner J.K. *See State ex rel. Summers v. Fox*, Slip Opinion No. 2020-Ohio-5585, ¶ 41. In doing so, the court implicitly held that Respondent's statutory right to access records outweighed J.K.'s constitutional right to informational privacy.

However, there is no constitutional right to access public records. *Houchins v. KQED, Inc.*, 438 U.S. 1, 14 (1978) ("There is no constitutional right to have access to particular government information, or to require openness from the bureaucracy.") (internal quotations omitted). Any public interest in the identification or prosecution of the offender referenced in *Bloch* no longer predominates in this case. Respondent's son pleaded guilty to his crimes, has been sentenced, and has exhausted his appellate remedies. There is no

longer any state interest in this matter that could overcome Petitioner J.K.'s constitutional right.

Therefore, the weighing of interests is clearly in Petitioner J.K.'s favor and the Ohio Supreme Court's decision was in error.

b. The Ohio Supreme Court's decision has far-reaching adverse effects on crime victims and public officials throughout Ohio.

This Court has previously acknowledged the terrible harm child victims face when child sexual abuse images are publicly disseminated. *Paroline v. United States*, 572 U.S. 434, 440 (2014) (citing *New York v. Ferber*, 458 U.S. 747, 759 (1982) ("The harms caused by child pornography, however, are still more extensive because child pornography is 'a permanent record' of the depicted child's abuse, and 'the harm to the child is exacerbated by [its] circulation.' ")).

While this case does not involve child sexual abuse images, the records sought here are substantially similar in that the records include videos and audio files containing explicit descriptions of sexual abuse perpetrated against a child victim. Many of the details are graphic and disturbing, involving physical and sexual violence. Respondent has already exhibited an eagerness to post videos and images of Petitioner J.K. on Facebook, along with graphic descriptions of the sex crimes committed against her. Just as the material is similar in nature, so are the impacts on Petitioner J.K.

This is especially so due to Respondent's demonstrated commitment to make this material public on social media.

As experts have noted, "[t]he sharing of the child sexual abuse images revictimizes children. Many victims know that the images of their sexual abuse as children are being consumed by numerous, and often unknown, perpetrators and that this revictimization may continue for the rest of their lives due to the nature of the Internet." Warren Binford et al., "Beyond *Paroline*: Ensuring Meaningful Remedies for Child Pornography Victims at Home and Abroad," 35 CHILD. LEGAL RTS. J. 117, 121 (2015). "The difference between child pornography victims' psychological harm and victims of other crimes is the permanent presence of the abuse material on the Internet." *Id.* at 128.

When the Ohio Supreme Court failed to consider, let alone analyze and weigh Petitioner J.K.'s constitutional right to informational privacy and, instead, instructed Petitioners Fox and Grey to release records to Respondent, the court enabled the re-victimization of J.K. Moreover, the court ensured all victims of sex crimes in Ohio will face similar threats to their privacy, safety, and healing as a result of the court's decision. Inevitably, the court's lack of consideration for a victim's constitutional right to informational privacy will have a chilling effect on crime reporting and lead to even more abysmal statistics on the reporting of sex crimes.

Following this decision from the Ohio Supreme Court, victims of sex crimes in Ohio[2] will be deprived of the constitutional right to informational privacy guaranteed by the Sixth Circuit in *Bloch v. Ribar*. This refusal to protect victim privacy will have deleterious effects on crime victims and on the criminal justice system as a whole. Minor crime victims, like Petitioner J.K., will suffer significant harm. In addition, public officials in Ohio, like Petitioners Fox and Grey, are left in a legally precarious situation in which they are subjected to liability from one direction or another any time records containing information of a personal, sexual nature are requested.

The right to informational privacy is critical to the healing process of sex crimes victims, especially child sex crimes victims, and is a crucial component of serving the state interests of protecting victims and encouraging crime reporting. Charles Putnam and David Finkelhor, "Mitigating the Impact of Publicity on Child Crime Victims and Witnesses," *Handbook on Children, Culture, and Violence*, 113, 115 (2006). Stripping away victim privacy protections will lead to a chilling effect on the already startlingly low reporting of sex crimes. *See* Department of Justice, Office of Justice Programs,

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[2] In 2019 alone, 514,851 Ohio citizens were victimized by crime. Federal Bureau of Investigation, *Crime in the United States*, https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-5 [https://perma.cc/2727-HNYX] (accessed Feb. 9, 2021). Of those, 34,269 were victims of violent felony crimes, such as the sex crimes committed against Petitioner J.K. *Id.* These numbers only represent reported crimes. *Id.* Countless victims will never report their victimization.

Bureau of Justice Statistics, National Crime Victimization Survey, 2010-2016 (2017) (Only 230 out of every 1,000 sexual assaults are reported to police. That means about 3 out of 4 go unreported.).

"Children and adolescents are the victims of 75% of the sex offenses that come to police attention." Putnam & Finkelhor, *supra*, at 113. For victims like Petitioner J.K., the victimization alone, without the added publicity, causes increased risk of adverse consequences, such as "depression, substance abuse, post-traumatic stress disorder, conduct disorder, delinquency, and additional child and adulthood victimization." *Id.* at 114. Adding unwanted publicity into the equation can produce disastrous consequences for child victims. *See id.* at 115.

> [P]ublicity may compromise the recovery of juvenile crime victims in several ways. First, the anticipation that people will learn about an embarrassing victimization may increase the victim's anxiety, embarrassment, and shame. This concern depends not just on the number of people who will potentially know, but also on whether specific individuals, such as classmates, relatives, or church members, will likely learn the details. Second, publicity may extend the recovery time for child victims because more individuals may potentially remind children about their victimization. Recovery from crime victimization is more rapid when children are able to put the experiences behind them and escape the victim role. Third, publicity about victimization may in some

> cases cause children to be targeted for hazing, exclusion, or even additional victimization.

Id.

In this case, Petitioner J.K. has faced all of the adverse impacts detailed above. J.K. does not suffer from the mere anticipation that her friends, family, church members, and other social acquaintances may learn about the fact of her victimization. Instead, Respondent has assured that, if he obtains the requested records, all of those people will not only know that J.K. was a victim of sex crimes, but will also have access to the graphic details of the sex crimes committed against J.K. More problematic still, some of the graphic details Respondent seeks to release to the public are J.K.'s own words. This means that J.K.'s image and voice, used during her conversations with police in an effort to seek access to justice and protect other children from victimization at the hands of Respondent's son, will be turned into a weapon against her.

Undoubtedly, J.K.'s recovery time has already been prolonged by the publicity wrought by Respondent. J.K. provided a sworn statement in the Ohio Supreme Court that Respondent's actions have made her often wish she had never reported the crimes. Victim Affidavit at ¶ 21. J.K. believes that the offender's threats to ruin her life if she ever "left him" or told anyone about the assaults are now being effectuated through Respondent. *See id.* at ¶ 22. Due to Respondent's actions, J.K. has been unable to "put the victim role behind her." *Id.* at ¶ 17.

Moreover, Respondent's presentation of his skewed perspective on his son's crimes and Respondent's release of the information he has already obtained has subjected J.K. to hazing and exclusion in her community, as many people have contacted her, blaming her for the crimes Respondent's son perpetrated against her. *Id.* at ¶¶ 8-15.

In addition, public officials in Ohio will suffer adverse consequences as they attempt to navigate the conflict created by the Ohio Supreme Court's decision. Public officials must now choose between releasing records involving personal, sexual details and risking suit from the victims of those crimes—as well as risking damage to the relationship between the public and their office, chilling crime reporting—or withholding those records as instructed by the Sixth Circuit and risk suits from requestors like Respondent. In light of the Ohio Supreme Court's decision there are now no suitable options for public officials in Ohio like Petitioners Fox and Grey.

This Court's review is necessary to protect minor victims like Petitioner J.K. and clarify the obligations of Ohio's public officials, like Petitioners Fox and Grey.

CONCLUSION

Review by this Court is critical to remedy the conflict between the Ohio Supreme Court and the Sixth Circuit, and the conflict between the federal circuits that leads to disparate impacts for sex crimes victims,

address the public policy concerns created by failure to protect the informational privacy rights of Petitioner J.K. and other sex crimes victims, and ensure that public officials like Petitioners Fox and Grey are not subjected to legal liability in their attempts to protect crime victims.

Petitioners respectfully request that this Court grant their petition for a writ of certiorari.

Respectfully submitted,

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