IN THE SUPREME COURT OF OHIO

M.R., A CINCINNATI POLICE OFFICER	:	Case No. 2020-1131
Plaintiff-Appellee	:	
v.	:	
	:	On Appeal from the Hamilton
JULIE NIESEN, et. al.	:	County Court of Appeals
	:	First Appellate District
Defendants-Appellants	:	Court of Appeals No. C-200296

MERIT BRIEF OF PLAINTIFF-APPELLEE M.R., A CINCINNATI POLICE OFFICER

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INTRODUCTION

This case involves a simple and well-settled procedural issue – whether a temporary restraining order ("TRO") issued to preserve the status quo pending a hearing on a preliminary injunction is subject to immediate appellate review. Ohio courts construing statutory and case law have routinely answered this question in the negative, resulting in the well-established principle that TROs are not immediately appealable.

But on deeper level, this case highlights the nefarious attempts of anti-police protestors, who, after maliciously defaming a police officer as a white supremacist on social media during a heightened anti-police climate, seek to circumvent the judicial process under the false guise of First Amendment protections. Rather than abide by the Trial Court's limited TRO prohibiting these protestors from causing further harm to the officer and his family by publishing his personal information (doxing him) until the preliminary injunction hearing, they filed an improper appeal, insisting that their right to dox the officer is of such a great matter of public concern that any attempt to prohibit that right—no matter how limited in time and scope—will cause them irreparable harm. They make this claim even though the potential harm to the officer and his family from the publication of his personal information, occasioned by the protestors' own baseless and malicious social media posts, far outweighs any burden from the limited restriction on doxing him. Further, in an ironic stance, their improper attempts to circumvent the judicial process has resulted in the very situation of which they complain – the TRO remains pending while they seek to appeal it, and the evidentiary hearing on the preliminary injunction remains continually stayed.

Plaintiff-Appellee M.R. ("M.R."), M.R. is a police officer assigned to the Violent Crimes Squad in District 4 of the Cincinnati Police Department and was a member of the Gang Unit and SWAT team; he is therefore subject to policing the activities of dangerous felons and drug-

traffickers. On June 24, 2020, while assigned to a provide crowd control and security at a hearing at Cincinnati City Council, MR responded to a question about the status of another officer by making and "okay" symbol with his hand, touching his thumb and index finger. The day after this event, purportedly construing the "okay" gesture as a "white power" symbol, Defendant-Appellant Julie Niesen ("Niesen") published social media posts describing M.R. as a "white supremacist." In addition, Defendant-Appellant Terhas White ("White") published false social media posts that referred to Plaintiff as "a white supremacist kk" and "white supremacist piece of shit." Even more disturbing, another Defendant, James Noe, published a false post on social media referring to M.R. as a limp-dick POS and claimed that he was flashing the "white power symbols to Black speakers." (Record 11., M.R. Aff., ¶ 14.) Noe also threated to publish M.R.'s personal identifying information. (Record 11, M.R. Aff. ¶ 15.) These statements and the implication that M.R. was using the "okay" symbol as a white power gesture were blatantly false.

Given the dangerous anti-police climate at the time these statements were made, they created dangerous risk of harm to M.R. and his family. During the summer of 2020, while peaceful protesters called for police reform, a more sinister thread of anti-police rhetoric and violence resulted in attacks on police officers and their vehicles and station houses.[1] Recent FBI data show upticks in police officer killings during years when there have been major incidents of civil unrest across the country.[2] And while the attacks on police officers increased, so to have the doxing of police officers, by publishing their personal identifying information such as names and addresses.[3]

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[1] Murkock, Jeff, "Cops under siege with rising waives of violence," **The Washington Times**, April 28, 2021, https://www.washingtontimes.com/news/2021/apr/28/police-officers-under-siege-violent-attacks-job-sc/; viewed 5/25/21.

[2] Id.

[3] NL Times, "Police say officers facing increased harassment, especially online;" https://nltimes.nl/2021/04/10/police-say-officers-facing-increased-harassment-especially-online, viewed 6/1/21.

To protect his family, M.R. filed a Complaint for which he sought and was granted leave to proceed under a under a pseudonym, protecting his anonymity. He also sought immediate relief by seeking a TRO and preliminary injunction to prohibit Niesen/White/Noe from publishing identifying information about him, including his name and his address (i.d. from doxing him). The Trial Court granted this request, although it denied his request to prohibit Niesen/White from continuing to describe him as a white supremacist, based on First Amendment grounds.

The TRO was limited in scope, specifically identifying the date of the hearing on the preliminary injunction, scheduled 6 days from the TRO entry, on July 30, 2020. But due to Niesen/White's requests, the preliminary injunction hearing was rescheduled twice, until September 1, 2020. And before the hearing, Niesen/White appealed the order granting the TRO to the First District Court of Appeals.

Relying on well-settled precedent that a TRO issued to maintain the status quo pending a hearing on a preliminary injunction is not an appealable order, the Frist District Court of Appeals dismissed the appeal. Niesen/White then sought discretionary review in this Court, arguing that the Trial Court's TRO constituted a prior restraint on constitutionally protected speech. This Court granted discretionary review on their First Proposition of Law: "When a Lower Court Imposes a Prior Restraint on Expression, Immediate Appellate Review is Required."

The Trial Court's issuance of a TRO is not a prior restraint on constitutionally protected speech subject to immediate review. The TRO simply maintains the status quo of the parties and prohibits them from publishing M.R.'s private information until the preliminary injunction hearing, which was originally set 6 days out from the TRO entry but moved twice due to Niesen/White's requests. Ohio courts, including this Court, have routinely held that such orders are not immediately appealable. Further, the TRO does not restrain constitutionally protected

speech. Rather, it protects MR from having his personal, private information published by anti-police protestors who have falsely and baselessly accused him of being a white supremacist in an anti-police climate. Further, even assuming, for the sake of argument, that the TRO was a prior restraint on constitutional speech, the potential harm that could befall M.R. and his family from being doxed after false accusations of racism far outweighs any harm that comes from a limited proscription upon Niesen/White prohibiting them from doxing M.R. until the injunction hearing.

STATEMENT OF THE CASE AND THE FACTS

M.R. is a Cincinnati police officer, assigned to the District 4 Violent Gang Squad, the Gang Unit and the SWAT team. (Record 11, Affidavit of M.R., ¶ 3.) Through those assignments, he has policed the activities of violent criminals, gang members and drug traffickers. (Record 11, M.R. Aff., ¶ 4.) Given the dangerous nature of his work, M.R. has taken steps to prevent his identity from being made public. (Record 11, M.R. Aff. ¶ 5.)

On June 24, 2020, M.R. was assigned to provide police services, including crowd control and overseeing the safety of the Cincinnati City Council Members, for an open forum on a Budget and Finance Committee meeting. (Record 11, M.R. Aff., ¶ 6.) Outside the meeting room, in the hall, a large crowd had gathered and was loudly urging the City to defund the police. (Record 11, M.R. Aff., ¶ 7.) The noise from the crowd made communication at conversational level difficult or impossible. (Record 11, M.R. Aff., ¶ 8.)

One of the members of the crowd asked M.R. about the status of another police officer. (Record 11, M.R. Aff., ¶ 9.) M.R. responded with an "OK" hand gesture, with his hand held up and his thumb touching his index finger. (Record 11, M.R. Aff., ¶ 9.) People in the crowd claimed this was a "white supremacist gesture." (Record 11, M.R. Aff., ¶ 10.) On June 25, 2020, one day after the hearing, Niesen posted on social media, falsely labeling M.R. as a "white supremacist." (Record 11, M.R. Aff, ¶ 11.) In addition, after the City Council forum, White published social media posts claiming that M.R. was a "white supremacist piece of shit." (Record 11, M.R. Aff., ¶ 16.) Defendant Noe (not involved in this Appeal) threated to dox M.R., by publishing his personal identifying information on social media, stating "we'll keep his home address and personal phone numbers to ourselves. For now." (Record 11, M.R. Aff. ¶ 15, Ex. 2.)

Given his prior work with dangerous felons and drug traffickers, the publication of his personal identifying information would place M.R. and his family in danger of harm. (Record 11, M.R. Aff., ¶ 20.) Accordingly, M.R. filed a Complaint against White, Niesen/Doe and other Defendants, and sought to proceed under a pseudonym, which the Trial Court granted. (Record 2, Complaint; Record 12, Motion for Leave to File Affidavit under Seal and Proceed under a Pseudonym; Record 9, Entry.) In his Complaint, M.R. asserted claims of false light invasion of privacy, defamation, violation of R.C. 2307.60 and negligence/recklessness against all Defendants. (Record 2, Complaint.) M.R. also filed a Motion for TRO and/or Preliminary Injunction, requesting the Trial Court to order the Defendants to:

- remove postings which refer to M.R. as a "white supremacist;" and
- refrain from posting M.R.'s personally identifying information on social media.

(Record 3, Motion for TRO and/or Preliminary Injunction.)

On July 24, 2020, the Trial Court conducted a hearing on the TRO. (Record 55, Transcript of Proceedings, 7/24/20.) During the hearing, counsel agreed to only proceed with the TRO hearing, and not the hearing for preliminary injunction. (Record 55, Transcript of Proceedings, p. 13.) The Trial Court granted M.R.'s request to prevent Niesen/White/Noe from publicly disseminating his personal information. (Record 55, Transcript of Proceedings, p. 77.) The Trial Court denied M.R.'s request to prohibit them from posting that he was a "white supremacist," citing Frist Amendment protections. (Record 55, Transcript of Proceedings, pps. 77-78.) At the hearing, the Court set a date for the preliminary injunction to occur on July 30, 2020, 6 days after the date of the TRO Entry. (Record 55, Transcript of Proceedings, p. 79; Record 13; Entry Granting Plaintiff's Motion for TRO.)

Due to requests from Niesen/White's counsel, the preliminary injunction hearing was continued until August 11, 2020. (Record 56, Complete Transcript of Proceedings, 8/11/20, pps. 98-99.) On August 11, 2020, prior to the hearing, M.R. renewed his request for injunctive relief prohibiting Terhas/White/Noe from publishing that he is a white supremacist, after the Court denied that portion of the TRO. (Record 31, Renewed Motion for Preliminary Injunction.) Due to several outstanding issues, including Terhas/White's requests for discovery, the Court rescheduled the preliminary injunction hearing until September 1, 2020, and advised that the TRO would stay in effect until then. (Record 56, Transcript, pps. 116 – 119.) But the hearing on the Preliminary Injunction never occurred, because White/Niesen appealed the Trial Court's decision on the TRO to the First District Court of Appeals. (Record 40, Notice of Appeal.) Upon Motion of M.R. to Dismiss the Appeal for lack of appealable order (See Appellate Record 2, Motion to Dismiss Appeal and for an Expedited Hearing), the First District Court of Appeals granted the Motion and dismissed the Appeal. (See Appellate Record 11, Judgment Entry of Dismissal and Opinion.)

Terhas/White then sought review of the dismissal with this Court. This Court accepted review on their First Proposition of Law: When a Lower Court Imposes a Prior Restraint on Expression, Immediate Appellate Review is Required."

ARGUMENT IN SUPPORT OF APPELLEE'S PROPOSITION OF LAW

Appellants' Proposition of Law No. I: When a lower court imposes a prior restraint on expression, immediate appellate review is required.

Appellee's Response to Proposition of Law No. 1: A TRO which maintains the status quo until the preliminary injunction hearing by prohibiting the publication of a police officer's personal identifying information is not a prior restraint subject to immediate appellate review.

A. A TRO maintaining the status quo is not immediately appealable.

An appellate court has jurisdiction to review and affirm, modify, or reverse judgments or final orders of the trial courts within its discretion. See Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. If an order is not final and appealable, the appellate court is without jurisdiction to review the matter and must dismiss the appeal. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989).

In dismissing Niesen/White's Appeal, the First District Court of Appeals applied the well-settled principle that the granting of a TRO, subject to a preliminary injunction hearing, is not a final order subject to immediate appellate review. *State ex rel. Tollis v. Cuyahoga Cty. Court of Appeal*s, 40 Ohio St.3d 145, 148, 532 N.E.2d 727 (1988); *Childs v. Kelley*, 1st Dist. Hamilton No. C-890468, 1991 WL 6360, *4 ("However, an order granting or vacating a temporary restraining order, such as the one in this case which extended fewer than fourteen days to the hearing on the Civ.R. 60(B) motion, does not constitute a final appealable order."); *Nexus Gas Transmission, LLC v. Camelback, Ltd.*, 5th Dist. Stark No. 2015CV00167, 2016-Ohio-624, ¶ 22 ("The granting of a temporary restraining order, when the ultimate relief sought is a permanent injunction, is generally not a final appealable order."); *Farmers Ins. Exchange v. Weemhoff*, 5th Dist. Richland No. 02-CA-26, 2002-Ohio-5570, ¶ 10; *Van Camp v. Riley*, 16 Ohio App.3d 457, 459, 476 N.E.2d

1078, (12th Dist.1984); *Cavanaugh v. Sealey*, 8th Dist. Cuyahoga No. 69907, 1997 WL 25521, *2.

"The rationale behind this determination is that a temporary restraining order is provisional in nature and employed to preserve the status quo of a case pending a request for a preliminary or permanent injunction." *In re Estate of Georskey*, 11th Dist. Geauga No. 2000-G-2299, 2001 WL 824326, *1. See also *Van Camp v. Riley*, 16 Ohio App.3d 457, 459, 476 N.E.2d 1078, (12th Dist.1984):

> A temporary restraining order is, by its very nature, just that—temporary. It is preliminary to something else. The issue of whether the trial court was correct or whether it erred in refusing to dissolve the temporary restraining order became moot when the trial court granted the permanent injunction, since the temporary restraining order was superseded by the permanent injunction.
>
> We observe further that under Section 3(B)(2), Article IV, of the Ohio Constitution, and App.R. 12(A), a court of appeals has jurisdiction to review only those orders of the common pleas court which are final. A temporary restraining order is certainly not a final order. See, also, R.C. 2505.02.

In this case, the rationale applies. At the time that M.R. sought a TRO and preliminary injunction, Niesen/White/Noe had not publicized M.R.'s personal identifying information. The Trial Court preserved that status quo by ordering them not to do so for 6 more days—the original date of the preliminary injunction hearing. Thus, the TRO was limited in scope and time. That the TRO remains in place almost a year later is no fault of M.R. Rather, it was Niesen/White's original requests to extend the hearing date and then their unfounded appeal which extended the TRO indefinitely. In fact, this prolonged delay further evidences why a TRO is not appealable; if these orders were subject to immediate appeal, they would never stay "temporary" given the prolonged appellate process.

B. <u>A temporary restriction on the malicious doxing of a police officer does not restrict constitutionally protected speech</u>

In a thinly veiled attempt to circumvent the appellate process, Niesen/White advance an outcome determinative argument that the TRO constitutes a prior restraint on constitutionally protected speech and is therefore automatically appealable. "The term 'prior restraint' is used 'to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.'" *Bey v. Rasawehr*, 161 Ohio St.3d 79, 2020-Ohio-3301, 161 N.E.3d 529, ¶ 26, quoting *Alexander v. United States*, 509 U.S. 544, 550, 113 S.Ct. 2766, 125 L.Ed.2d 441 (1993). In this case, the alleged "constitutionally protected speech" is the doxing of a police officer who has been falsely accused of being a white supremacist—by the very parties who now complain about the restraint-- in the wake of rising anti-police sentiment.

Commentators have defined "doxing" as the public release of an individual's private, sensitive and personal information, including home address, emails and phone numbers, family members contact information and photos of an individuals' children and the school they attend. See MacAlister, Julia, *The Doxing Dilema, Seeking a Remedy for the Malicious Publication of Personal Information*, Fordham Law Review, Vol. 85, p. 2456. In this case, the Trial Court prohibited Niesen/White/Doe from doxing M.R. after they had falsely accused him of being a "white supremacist" on their social media posts in a viral environment highly volatile to police officers. These statements were malicious, baseless, cowardly and done with the intent to harm and intimidate M.R and expressly threatened to dox him in the future.

The First Amendment protects those engaged in speech which can "be fairly considered as relating to any matter of political, social, or other concern to the community." *Snyder v. Phelps*, 562 U.S. 443, 453, 131 S.Ct. 1207, 179 L.Ed.2d 172 (2011), citing *Connick v. Myers*, 461 U.S.

138, 146, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983). Even when speech is arguably "inappropriate or controversial ... [it] is irrelevant to the question [of] whether it deals with a matter of public concern." *Snyder* at 453, citing *Rankin v. McPherson,* 483 U.S. 378, 387, 107 S.Ct. 2891, 97 L.Ed.2d 315 (1987). Deciding whether speech is of public or private concern requires the Court to examine the "content, form, and context" of the speech throughout the "whole record." *Snyder* at 453.

Niesen/White/Noe's statements on social media that M.R. was a "white supremacist" were false. False statements are not a matter of public concern; they not constitutionally protected. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 110 S.Ct. 2695, 111 L.Ed.2d (1990); *Disciplinary Counsel v. Gardner*, 99 Ohio St.3d 416, 2003-Ohio-4048, 793 N.E.2d 425, ¶ 15 ("the First Amendment does not protect any individual who knowingly makes false statements or expresses opinions that imply false statements of fact."); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984) ("False statements of fact harm both the subject of the falsehood and the readers of the statement"). Since Niesen/White/Noe made defamatory and malicious statements accusing M.R. of being a white supremacist--statements which fall outside of the protection of the First Amendment--they cannot now seek the shield of the First Amendment to protect their attempts to dox him.

In addition, the threat of doxing M.R. in the particular anti-police environment in which Niesen/White/Noe made their defamatory and threatening posts is akin to a threat of potential physical harm, and not subject to constitutional protection. *United States v. Hoff*, 767 Fed.Appx. 614, 616, (6th Cir. 2019) ("The First Amendment protects freedom of speech, among other guarantees, not threats of physical harm."). So here again, Niesen/White's arguments highlight the procedural mess they have created by attempting to appeal a TRO. Their First Amendment

arguments necessarily relate to the merits of the case – whether and to what extent their statements were false, baseless and made maliciously and/or with intent to harm. These issues were not addressed in the Trial Court's decision on the TRO and therefore are not subject to appeal. The TRO merely held the status quo until the more in-depth **evidentiary** hearing on preliminary injunction, which never occurred because of the appeal. In seeking First Amendment protection, Niesen/White improperly attempt to put the merits of this case to this Court before the Trial Court has made any evidentiary rulings during a preliminary injunction hearing.

Finally, as the First District noted, none of the cases upon which Niesen/White rely involve the appeal of only a TRO and its unique procedural mechanism which by nature results in a temporary, limited order:

- *Bey v. Rasawehr*, 161 Ohio St.3d 79, 2020-Ohio-3301, 161 N.E.3d 529, ¶ 16, involved a civil stalking protective order issued pursuant to R.C. 2903.214, which remained in effect for five years after its issue date;
- *Tory v. Cochran*, 125 S.Ct. 2108, 544 U.S. 734, 161 L.Ed.2d 1042 (2005) involved a permanent injunction prohibiting picketing, displaying signs and making oral statements about an attorney in any public forum; further, the court found that since the attorney had died after the issuance of the injunction, the grounds for the injunction constituted an overly broad prior restraint on free speech;
- *Seven Hills v. Aryan Nations*, 76 Ohio St.3d 304, 305 667 N.E.2d 942 (1996) and *Puruczky v. Corsi*, 2018-Ohio-1335, 110 N.E.3d 73, ¶ 10 (11th Dist.), involved the trial court's issuance of a TRO and a preliminary injunction after an evidentiary hearing;
- *Connor Group v. Raney*, 2nd Dist. Montgomery No. C.A. 26653, 2016-Ohio-2959, ¶ 9 and *International Diamond Exchange Jewelers, Inc. v. U.S. Diamond & Gold Jewelers, Inc.*,

70 Ohio App.3d 667, 669, 591 N.E.2d 881 (2nd Dist.1991) involved a preliminary injunction issued after an evidentiary hearing;

- *Madsen v. Women's Health Center, Inc.*, 114 S.Ct. 2516, 512 U.S. 753, 758, 129 L.Ed.2d 593 (1994) involved a permanent injunction; and
- *National Socialist Party of America v. Village of Skokie*, 97 S.Ct. 2205, 432 U.S. 43, 53 L.Ed.2d 96, (1977) involved an injunction under Illinois law.

Niesen/White have failed to direct this Court to any Ohio case which holds that a limited TRO issued to preserve the status quo pending a preliminary injunction hearing is subject to immediate appellate review.

C. **Even assuming, arguendo, that the TRO is a prior restraint, the potential harm that would befall M.R. by the publication of his identifying information significantly outweighs any harm to Niesen/White by a limited prohibition on publishing this information**.

For all their hyperbolic protestations about constitutional deprivation and irreparable harm, under the existing TRO, Niesen/White/Noe are simply prohibited from publishing personal identifying information about M.R.—when they were not doxing him in the first place--until the preliminary injunction hearing, which, but for their requests for continuances and this appeal, would have occurred 6 days out from the TRO. So even if this Court finds that the TRO is a prior restraint on constitutionally protected speech, the harm that could befall M.R. from their making his personal information public far outweighs any burden flowing from this limited prohibition on Niesen/White/Noe.

While prior restraint on speech carries a "heavy presumption against its constitutional validity," *New York Times Co. v. United States*, 403 U.S. 713, 723, 91 S.Ct. 2140, 2146, 29 L.Ed.2d 822, 830 (1971), not all prior restraints are per se unconstitutional. *Connor Group v. Raney*, 2nd

Dist. Montgomery No. C.A. 26653, 2016-Ohio-2959, ¶ 56. The Court must consider the restriction in its context of litigation and in particular the temporary nature of the order, which must be viewed differently from limitations imposed in broader contexts. Id. at ¶ 56. While individuals have a right to communicate freely, a temporary restraint on speech is proper in compelling circumstances. Id. at ¶ 56.

Such compelling circumstances exist here, particularly in light of the limited harm occasioned by the temporary prohibition on doxing a police officer that Niesen/White/Noe have already maliciously and baselessly defamed. Prior to the TRO, Niesen/White/Noe falsely portrayed M.R. as a white supremacist, a racist police officer during a time of rising anti-police sentiment. Noe threatened to publish his personal identifying information on social media. Given the dangerous nature of M.R.'s work, publishing his name, address and other personal contract information in an anti-police, racially divisive climate, after he has been falsely accused of being a white supremacist, would create a serious risk of harm for M.R. and his family.

Contrarily, under the TRO as written, Niesen/White/Noe were prohibited from publishing his personal information—which they had not done previously—on social media for 6 days, until the court could conduct an evidentiary hearing. That the TRO has been extended indefinitely through this appeal is their own procedural doing; they requested extensions of the injunction hearing and filed the appeal which has delayed the process. Further, they now complain that the Trial Court failed to determine initially that the personal identifying information of M.R. was constitutionally protected before restricting the speech. This is incorrect; the Trial Court granted initial First Amendment protection to their statements by denying M.R.'s request to prohibit further posts identifying him as a white supremacist. Implicit in this decision was the Court's finding that in this context of malicious falsehoods created by Niesen/White/Noe's own prior postings, his

public identifying information was not continually protected speech. Further, this is exactly what Niesen/White could have addressed at the preliminary injunction hearing, had they properly followed the judicial process.

D. Response to amicus arguments

In response to the Amicus Curiae Brief in support of Niesen/White, M.R. incorporates the arguments contained herein, as they mostly restate those made by Niesen/White, with one exception. Amicus Curiae apparently contend (it is not quite clear) the TRO was not issued in limited temporal duration and was therefore procedurally deficient. In fact, the TRO, as written, was in effect for 6 days, until July 30, 2020, when the hearing on the preliminary injunction was scheduled to take place. That this time was extended indefinitely is not the fault of M.R. or the Trial Court; it lies solely with Niesen/White. They requested two continuances of the injunction hearing and then filed a premature appeal of the TRO, prior to the in-depth evidentiary hearing on the preliminary injunction. They cannot be the cause of the indefinite TRO and now be heard to complain about it.

CONCLUSION

The Trial Court's TRO is not an appealable order. It was issued to maintain the status quo, to prevent Niesen/White/Noe from publishing personal identifying of M.R., a police office working in a dangerous field in the midst of anti-police settlement, after they had maliciously and falsely accused him of being a white supremacist. The TRO was limited in scope, extended only because of their own requests to continue the preliminary injunction hearing and the filing of this appeal. Their First Amendment claims attempt to circumvent the judicial process; they should have waited to raise these concerns at the preliminary injunctive hearing rather that place the merits

of the case prematurely before this Court. Accordingly, M.R. respectfully requests this Court to affirm the First District Court of Appeals decision that the TRO is not a final appealable order.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served electronically on counsel of record this 2nd day of June, 2021.

/s/ *Zachary Gottesman*
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