

THE POST-*STECKMAN* LIFE OF A CRIMINAL DEFENDANT IN OHIO

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I. INTRODUCTION

James Madison once said, “A popular government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both.”¹ The idea of governmental transparency is not a new concept. One of our nation’s founding fathers, Thomas Jefferson, believed that “information is the currency of democracy.”² In order for democracy to work properly, the people of the United States must be able to trust its leaders. This means that the public must have access to what its governmental leaders are doing and how the government is operating. Every state in the United States eventually began to recognize the importance of governmental transparency. One by one, states began enacting variations of public records laws to protect the public’s right to obtain and inspect public records from governmental bodies.³ Sunshine Laws, as these state statutes are often called, ensure that the public has access to important public records, which helps promote governmental transparency. Ohio enacted its own version of a public records law in 1963.⁴ Ohio Revised Code section 149.43 provides that all public records should be made available to any person who makes a proper request, so long as the records requested do not fall into any of the provided exemptions.⁵

On its face, Ohio’s Public Records Act seems to promote the idea of open government. The early Ohio cases dealing with the issues of transparency and interpretation Ohio’s Public Records Act appeared to support this ideology as well⁶. However, in 1994, the Supreme Court of Ohio drastically limited the usability of the Public Records Act for criminal defendants. In *State ex rel. Steckman v. Jackson*, the Supreme

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1. MIKE DEWINE, OHIO ATTORNEY GENERAL, OHIO SUNSHINE LAWS: AN OPEN GOVERNMENT RESOURCE MANUAL 2016 at iv (2016).

2. *Id.*

3. Breanne Parcels, Comment, *Bring Back the Bite: Restoring Teeth to Ohio’s Public Records Law*, 38 DAYTON L. REV. 225, 230 (2012); see also *State Public Record Laws*, FOIADVOCATES, <http://foiadvocates.com/records.html> (last visited Apr. 26, 2016).

4. OHIO REV. CODE ANN. § 149.43 (LexisNexis 2015).

5. *Id.* § 149.43(B)(1).

6. See *infra* note 10.

Court of Ohio held that criminal defendants could no longer use the Ohio Public Records Act to obtain public records related to their cases.⁷ Relying on the arguments set forth in the merit briefs of *State v. Athon*,⁸ this Article addresses the fundamental problems with the *Steckman* holding and the Supreme Court of Ohio's interpretation of Ohio's Public Records Act.

Part II discusses the background surrounding the jurisprudence of Ohio's Public Record Act and how it came to be codified. Furthermore, it explores how Ohio courts interpreted and applied the Public Records Act, while also examining the shift from the legislature's desire for governmental transparency to the *Steckman* court's desire for convenience. This Article also discusses two important rights that a criminal defendant is entitled to under the United States Constitution: the right to equal protection and the right to effective assistance of counsel.

Part III addresses the problems that the *Steckman* holding created for an entire class of people: criminal defendants. The court's interpretation and expansion of the Ohio Public Records Act violates a criminal defendant's constitutional rights to equal protection and effective assistance of counsel. Part III also argues that the Supreme Court of Ohio's holding in *Steckman* is contrary to the legislative intent that guided the General Assembly's enactment of Ohio's Public Records Act. The General Assembly sanctioned the Public Records Act to promote transparency and further open government ideals; however, the *Steckman* holding is inapposite because it completely prohibits criminal defendants from using the statute, closing the door on those who need access to public records the most.

Lastly, Part III analyzes the policy concerns behind the *Steckman* holding and the effect it has had on criminal defendants. Part IV concludes that the Supreme Court of Ohio has created a dangerous precedent in *Steckman* that could lead to even less governmental transparency in the future.

II. BACKGROUND

Ever since the early 1900s, Ohio courts have recognized the importance of transparency in government. In doing so, they have emphasized the value of public records. One of the earliest Ohio cases dealing with public records was *Wells v. Lewis*, in which the Superior Court of Cincinnati ruled that Cincinnati citizens had a right to inspect real estate records held by the municipal auditor.⁹ Despite English tradition and common law that

7. *State ex rel. Steckman v. Jackson*, 639 N.E.2d 83, 92 (Ohio 1994).

8. *State v. Athon*, 989 N.E.2d 1006 (Ohio 2013).

9. Paul Aker, Comment, *Towards Darkness: Ohio's Presumption of Openness Under the Public*

had not established such a public right, the court declared that “[a]s public records are but the people’s records, it would seem necessarily to follow that unless forbidden by a constitution or statute, the right of the people to examine their own records must remain.”¹⁰ The *Wells* court held that since the right of access to public records, although not explicitly enumerated in the Constitution of the State of Ohio or any statute, is tied to other guaranteed freedoms under the constitution, it can only be rescinded if the legislature decides to remove or amend it.¹¹ Almost sixty years later, the *Wells* holding continued to guide Ohio courts in their decisions on the transparency and accessibility of public records. The Supreme Court of Ohio, looking to the treatise *Ohio Jurisprudence* for guidance, emphasized in *State ex rel. Patterson v. Ayers*:

The rule in Ohio is that public records are the people’s records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore, anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same.¹²

In relying on *Ohio Jurisprudence*’s analysis of Ohio’s public record principles, the Supreme Court of Ohio reinforced the public’s right to access public records and extended this right to records produced by the Registrar of Motor Vehicles.

A. Codifying the Common Law: Ohio Revised Code Section 149.43

The movement and mentality towards openness would soon begin to permeate into Ohio courts and legislature. Only a few years after the *Ayers* decision in 1963, the legislature, seemingly influenced by other states, codified Ohio’s common law respecting the public’s right to access records, citing the viewpoints of James Madison and Thomas Jefferson on transparency and accountability as guiding principles.¹³ In doing so, Ohio passed the first version of the Ohio Revised Code (ORC) section 149.43,¹⁴ which “made all records held by any Ohio government agency

Records Act, 41 CAP. U. L. REV. 361, 368–69 (2013).

10. *Wells v. Lewis*, 12 Ohio Dec. 170, 176 (Sup. Ct. Cin. 1901).

11. *Aker*, *supra* note 9, at 369.

12. *State ex rel. Patterson v. Ayers*, 171 N.E.2d 508, 509 (Ohio 1960) (quoting 35 O. JUR § 41 (1934))

13. DEWINE, *supra* note 1.

14. OHIO REV. CODE ANN. § 149.43 (LexisNexis 2015).

open to public inspection and duplication.”¹⁵ As it currently stands, ORC section 149.43, also known as the Ohio Public Records Act, “regulates the circumstances under which the public is entitled to inspect government records . . . [and] requires every ‘public office’ to promptly prepare and make available for inspection all ‘public records,’ at all reasonable times, during regular business hours.”¹⁶

Although the Public Records Act (PRA) was initially enacted with no exemptions, it has since undergone many changes because the Ohio Legislature felt it left too much information exposed.¹⁷ ORC section 149.43(A)(1) lists twenty-nine different types of records that are not considered public and are therefore exempt under the PRA.¹⁸ Two of the most controversial exemptions are the trial preparation records and the confidential law enforcement investigatory records.¹⁹ As defined under ORC section 149.43(A)(4), a trial preparation record is “any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.”²⁰ A confidential law enforcement investigatory record is “any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature.”²¹ These kinds of records are exempt if the release of the record: (1) would create a high probability of disclosure of an uncharged suspect’s identity;²² (2) involves information that would tend to disclose a source or witness’s identity;²³ (3) involves specific confidential investigatory techniques or procedures or specific investigatory work product;²⁴ or (4) involves information that would endanger the life or physical safety of an officer, victim, witness, or other confidential source.²⁵

If a record falls under the category of trial preparation records or confidential law enforcement investigatory records, it is exempt from public access. In order to understand how these exemptions work, it is important to understand how Ohio courts have interpreted and applied the PRA.

15. Aker, *supra* note 9, at 370.

16. Thomas J. Moyer, Article, *Interpreting Ohio’s Sunshine Laws: A Judicial Perspective*, 59 N.Y.U. ANN. SURV. AM. L. 247, 250 (2003).

17. Aker, *supra* note 9, at 371.

18. OHIO REV. CODE ANN. § 149.43 (A)(1).

19. *Id.* § 149.43(A)(1)(g),(h).

20. *Id.* § 149.43(A)(4).

21. *Id.* § 149.43(A)(2).

22. *Id.* § 149.43(A)(2)(a).

23. *Id.* § 149.43(A)(2)(b).

24. OHIO REV. CODE ANN. § 149.43(A)(2)(c).

25. *Id.* § 149.43(A)(2)(d).

B. The Ohio Courts Shift from Transparency to Convenience

Ohio courts are frequently called upon to interpret the meaning of the PRA and its exemptions, and to determine how broadly or narrowly they can be applied. Initially, the courts, in construing the PRA as a whole, erred on the side of transparency by narrowly applying the exemptions. Former Ohio Supreme Court Chief Justice Thomas Moyer noted, “[E]xemptions must be narrowly construed in favor of disclosure, ‘and any doubt should be resolved in favor of disclosure of public records.’”²⁶ Justice Moyer’s idea reflected the long-standing philosophy that the public has a stronger interest in having access to these records than the government does in keeping them contained.

In 1992, the Supreme Court of Ohio rejected an argument that “it is the function of the judiciary to balance personal privacy rights against the PRA’s demand for disclosure.”²⁷ In *State ex rel. Toledo Blade Co. v. University of Toledo Foundation*, a newspaper publisher sought to compel the University of Toledo Foundation to disclose the names of the donors from whom it solicited and received donations for the benefit of the university.²⁸ The main point of contention was whether or not the University of Toledo Foundation could qualify as a “public office” under the PRA,²⁹ and thus could be forced to disclose the information. For numerous reasons, the Supreme Court of Ohio held that the foundation did qualify as a “public office.” One of the foundation’s main arguments against disclosure was that any disclosure violated its right to privacy. In dismissing this argument, the Court relied on a previous holding, which stated that “the court has a duty to enforce a statute as written and not ‘to add to, enlarge, supply, expand, extend or improve the provisions of the statute to meet a situation not provided for.’”³⁰ Since there was no authority indicating that the Ohio General Assembly intended for Ohio’s common law privacy right to prohibit the disclosure of the names of donors to a public institution, the Supreme Court of Ohio refused to extend the PRA’s protection to the foundation.³¹ Through this holding, the court emphasized that it was the legislature’s responsibility, not the

26. Moyer, *supra* note 16, at 252.

27. Aker, *supra* note 9, at 373.

28. *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 602 N.E.2d 1159 (Ohio 1992).

29. Ohio Rev. Code. § 149.011(A) defines “public office” as “any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.” OHIO REV. CODE ANN. § 149.011(A) (LexisNexis 2013).

30. *Toledo Blade*, 602 N.E. 2d at 1164 (quoting *State ex rel. Fox v. Cuyahoga Cty. Hosp. Sys.*, 529 N.E.2d 443 (Ohio 1988), in turn quoting *State ex rel. Foster v. Evatt*, 56 N.E.2d 265 (Ohio 1944)).

31. *Id.*

judiciary's, to determine what records should be exempt from the PRA.³² Since the court trusted that the Ohio General Assembly had already contemplated the complexities of the exemptions and what they excluded, the court did not feel it was its responsibility to alter the current exemptions or add new ones.³³

1. *State ex rel. NBC v. City of Cleveland*

The Supreme Court of Ohio's longstanding refusal to extend the PRA beyond the legislature's intent was further reinforced in *State ex rel. NBC v. City of Cleveland*.³⁴ The National Broadcasting Company (NBC), an operator of a television station, sought disclosure of "investigative files relating to twelve investigations of the use of deadly force by Cleveland police officers against civilians."³⁵ The City of Cleveland and its officials argued that NBC had no legal right of inspection because the documents were within the scope of both the confidential law enforcement investigatory records and the trial preparation records exemptions under the PRA.³⁶ Therefore, the City of Cleveland refused to release the documents to NBC for inspection. This case required the Supreme Court of Ohio to closely examine two of the PRA's exemptions. The court first analyzed the confidential law enforcement investigatory record exemption and then turned to the trial preparation record exemption.

Under the PRA, a confidential law enforcement investigatory record is not a public record and is not subject to disclosure.³⁷ While examining whether or not the documents fell within the confidential law enforcement investigatory record exemption, the court clarified that "[t]he specific investigatory work product exception . . . protects an investigator's deliberative and subjective analysis, his interpretation of the facts, his theory of the case, and his investigative plans. The exception does not encompass the objective facts and observations he has recorded."³⁸ The court found that, since the records requested involved the city's monitoring and disciplining of its police officers and were routinely generated in incidents where an officer used deadly force, the records were required to be disclosed under the PRA.³⁹ The court's holding on this issue meant that "police could not withhold records simply because

32. *Id.*

33. Aker, *supra* note 9, at 383.

34. *State ex rel. Nat. Broad. Co., Inc. v. City of Cleveland*, 526 N.E.2d 786 (Ohio 1988).

35. *State ex rel. Nat. Broad. Co., Inc. v. City of Cleveland*, No. 52337, 1987 Ohio App. LEXIS 10888, at *1 (Ct. App. Mar. 13, 1987).

36. *State ex rel. Nat. Broad. Co., Inc.*, 526 N.E.2d at 787 (Ohio 1988).

37. OHIO REV. CODE ANN. § 149.43(A)(1)(h), (2).

38. *State ex rel. Nat. Broad. Co., Inc.*, 526 N.E.2d at 790.

39. *Id.*

they generated them during the course of an investigation.”⁴⁰ After analyzing this exemption, the court dealt with the City of Cleveland’s other argument that the reports cannot be disclosed because they fall under the trial preparation record exemption.

As mentioned above, a trial preparation record is “any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal proceeding, including the independent thought processes and personal trial preparation of an attorney.”⁴¹ The City of Cleveland argued that NBC was not entitled to inspect the reports because they “were specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding.”⁴² The Supreme Court of Ohio had previously emphasized that the statute requires the documents to have been “*specifically* compiled in reasonable anticipation of litigation to qualify as trial preparation records.”⁴³ Applying this previous holding, the court found that the records at issue were only gathered to satisfy the requirement of a general police order requiring investigation of all police shootings.⁴⁴ Therefore, the records were not compiled *specifically* in reasonable anticipation of litigation and could not be withheld from NBC under the trial preparation record exemption.⁴⁵

The *NBC* case reinforced the common law principle that the lower courts “should resolve any doubts about the nature of such records in favor of disclosure.”⁴⁶ The Supreme Court of Ohio “amplified its already settled policy: documents were presumed open unless a government agency proved the legislature intended otherwise.”⁴⁷ Once again, the Supreme Court of Ohio chose to put the public’s right to access public records above the government’s right to privacy. It seemed as though the Ohio Legislature’s and Supreme Court of Ohio’s desire for transparency was here to stay, and that the Supreme Court of Ohio would continue to respect and defer to the General Assembly’s intent. However, this tendency to err on the side of disclosure by supporting an open records policy would not last.

40. Aker, *supra* note 9, at 375.

41. OHIO REV. CODE ANN. § 149.43(A)(4).

42. *State ex rel. Nat. Broad. Co., Inc.*, 526 N.E.2d at 791.

43. *Id.*

44. *Id.*

45. *Id.*

46. Aker, *supra* note 9, at 376.

47. *Id.* at 377; *see also* *State ex rel. Nat. Broad. Co. v. City of Cleveland*, 527 N.E.2d 786, 790 (the Supreme Court of Ohio held that “a governmental body refusing to release records has the burden of proving that the records are excepted from disclosure pursuant to R.C. 149.43”).

2. *State ex rel. Steckman v. Jackson*

Six years after the Supreme Court of Ohio expressly refused to go beyond the Ohio General Assembly's intent to expand the PRA's exemptions, the court used its "concern for convenience" to invent a new exemption to the PRA.⁴⁸ In *State ex rel. Steckman v. Jackson*, three cases involving criminal defendants were consolidated.⁴⁹ Each defendant sought to obtain records pertaining to their cases from the prosecutors using the PRA. The court was faced with the issue of whether criminal defendants may invoke the PRA to obtain records that Ohio Criminal Rule 16 (Crim. R. 16) did not expressly require.⁵⁰ The government denied all of the public records requests on the grounds that the records were exempt from disclosure under the PRA and maintained that, even if the records were not exempt, the PRA was not the correct vehicle for the criminal defendants to use to obtain these public records.

In Case Number 92-2254, prior to being tried and pursuant to the PRA, a criminal defendant brought an action in mandamus to compel the disclosure of police files related to the investigation of the defendant's case.⁵¹ In the other two cases decided in *Steckman*, criminal defendants filed petitions for post-conviction release and sought all police records relating to the charges against them.⁵² Once again, the Supreme Court of Ohio was forced to analyze the same two exemptions as it did in the *NBC* case: the specific investigatory work product and the trial preparation record exemptions.

According to the PRA, a confidential law enforcement investigatory record is "any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature."⁵³ As stated above, these kinds of records are exempt if the release of the record: (1) would create a high probability of disclosure of an uncharged suspect's identity;⁵⁴ (2) involves information that would tend to disclose a source or witness's identity;⁵⁵ (3) involves specific confidential investigatory techniques or procedures or specific investigatory work product;⁵⁶ or (4) involves information that would endanger an officer, victim, witness, or other confidential source.⁵⁷ To understand the main issue in the case, the

48. Aker, *supra* note 9, at 377.

49. *State ex rel. Steckman v. Jackson*, 639 N.E.2d 83, 88 (Ohio 1994).

50. Aker, *supra* note 9, at 378.

51. *Steckman*, 639 N.E.2d at 88.

52. *Id.*

53. OHIO REV. CODE ANN. § 149.43(A)(2).

54. *Id.* § 149.43(A)(2)(a).

55. *Id.* § 149.43(A)(2)(b).

56. *Id.* § 149.43(A)(2)(c).

57. *Id.* § 149.43(A)(2)(d).

court felt it was necessary to define “work product” as it is used in ORC section 149.43(A)(2)(c).⁵⁸ The court turned to Black’s Law Dictionary for guidance, which defines the “work product rule,” as protecting “any notes, working papers, memoranda, or similar materials prepared by attorneys [here, by law enforcement officials] in anticipation of litigation.”⁵⁹ Under this broad definition of “working papers,” any records compiled by law enforcement officials, except ongoing routine offense and incident reports, are exempt from disclosure to a criminal defendant under the PRA.⁶⁰ Contrary to the court’s prior refusal to expand any of the PRA’s exemptions, the Supreme Court of Ohio used this case to dramatically broaden the scope of confidential law enforcement investigatory reports to include documents created by law enforcement officials.⁶¹

Next, the court analyzed the trial preparation record exemption. As defined under ORC section 149.43(A)(4), a trial preparation record is “any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal proceeding, including the independent thought processes and personal trial preparation of an attorney.”⁶² According to the Supreme Court of Ohio, virtually everything found in a prosecutor’s file was likely compiled in anticipation of a specific criminal proceeding or could be considered his or her personal trial preparation.⁶³ Therefore, the court held “that information, not subject to discovery pursuant to Crim. R. 16(B), contained in the file of a prosecutor who is prosecuting a criminal matter, is not subject to release as a public record pursuant to [ORC section] 149.43 and is specifically exempt from release as trial preparation record in accordance with [ORC section] 149.43(A)(4).”⁶⁴

Not only did the Supreme Court of Ohio interpret the term “trial preparation record” broadly, it also clarified the time period for how long a trial preparation record can qualify as exempt when being requested by or on behalf of a criminal defendant. According to the court, “once a record becomes exempt from release as a ‘trial preparation record,’ that record does not lose its exempt status unless and until all ‘trials,’ ‘actions’ and/or ‘proceedings’ have been fully completed.”⁶⁵ This extension of the trial preparation exemption even goes so far as to prevent a defendant

58. State *ex rel.* Steckman v. Jackson, 639 N.E.2d 83, 94 (Ohio 1994).

59. *Id.* (citing BLACK’S LAW DICTIONARY (6th Ed. Rev. 1990)).

60. *Steckman*, 639 N.E.2d at 94.

61. Aker, *supra* note 9, at 381.

62. OHIO REV. CODE ANN. § 149.43(A)(2)(4).

63. *Steckman*, 639 N.E.2d at 92.

64. *Id.*

65. *Id.*

from receiving any records for a post-conviction relief petition. The court stated that because “the possibility of retrial remains, the defendant, who has obtained records during postconviction proceedings, would have on retrial more information than she or he would be entitled to possess if limited to discovery pursuant to Crim. R. 16.”⁶⁶ Essentially, this means that a defendant cannot even obtain these records once he or she has been convicted and the trial is over. The practical effect of this holding is that once a document, requested by or on behalf of a criminal defendant, qualifies as a trial preparation document under the PRA, it remains exempt from the public until a criminal defendant is acquitted, pardoned, or dies.⁶⁷

The Supreme Court of Ohio’s main issue with each of the defendants’ requests was that the defendants chose to use the PRA instead of Crim. R. 16. The court believed that “[i]n order to avoid the results of Crim. R. 16, some defendants . . . are resorting to the use of [ORC section] 149.43 to . . . obtain information to which they are not entitled under Crim. R. 16 and . . . to bring about interminable delay in their criminal prosecutions.”⁶⁸ Prior to *Steckman*, criminal defendants could use either the PRA or Crim. R. 16 to obtain similar public records.⁶⁹ However, in the court’s view, allowing criminal defendants access to all of these records through the PRA essentially rendered Crim. R. 16—the preferred method of discovery—useless, which created undesirable chaos that could not be allowed to persist.⁷⁰

The goal of Crim. R. 16 is to “provide all parties in a criminal case with the information necessary for a full and fair adjudication of the facts, to protect the integrity of the justice system and the rights of defendants, and to protect the well-being of witnesses, victims, and society at large.”⁷¹ Similar to the PRA, this rule contains a list of items the prosecutor must give the defendant upon his or her request, including “[a]ll reports from

66. *Id.* at 93.

67. Aker, *supra* note 9, at 379–80.

68. *Steckman*, 639 N.E.2d at 89.

69. OHIO CRIM. R. 16(B)(6) (LexisNexis 2016) (“Upon receipt of a written demand for discovery by the defendant, and except as provided in division (C), (D), (E), (F), or (J) of this rule, the prosecuting attorney shall provide copies or photographs, or permit counsel for the defendant to copy or photograph, the following items related to the particular case indictment, information, or complaint, and which are material to the preparation of a defense, or are intended for use by the prosecuting attorney as evidence at the trial, or were obtained from or belong to the defendant, within the possession of, or reasonably available to the state, subject to the provisions of this rule: . . . (6) All reports from peace officers, the Ohio State Highway Patrol, and federal law enforcement agents, provided however, that a document prepared by a person other than the witness testifying will not be considered to be the witness’s prior statement for purposes of the cross examination of that particular witness under the Rules of Evidence unless explicitly adopted by the witness . . .”).

70. *Steckman*, 639 N.E.2d at 92.

71. OHIO CRIM. R. 16(A).

peace officers, the Ohio State Highway patrol, and federal law enforcement agents.”⁷² In the Supreme Court of Ohio’s view, Crim. R. 16 is a rule of procedure and trumps any other means of discovery, namely the PRA. In *Steckman*, the court unequivocally held that defendants could no longer obtain records from prosecutors related to their cases by using the PRA.⁷³

To justify this harsh of a holding, the Supreme Court of Ohio argued that criminal trials are being disrupted and delayed due to defendants’ attempted use of the PRA to circumvent and supplement Crim. R. 16.⁷⁴ According to the *Steckman* court, Ohio courts were “consuming tremendous time and resources to review, in some cases, boxes and boxes full of records alleged to be public.”⁷⁵ It also expressed its concerns over the fact that much of the information being reviewed is detrimental to the defendant or may never be admitted into evidence, and that judges will have a hard time ignoring such information when ruling on the defendant’s case.⁷⁶ However, the court’s main rationale for its holding in *Steckman* was that it sought to prevent criminal defendants from using the PRA to circumvent the rules of discovery.⁷⁷ The court found that “this tactic gave defendants evidence . . . under the PRA that they could not obtain through discovery . . . [but] it kept prosecutors from receiving their own evidence that the rules of criminal discovery would have otherwise forced defendant attorneys to provide.”⁷⁸ An important aspect of Crim. R. 16 is that it triggers a reciprocal duty of disclosure by the defendant and defendant’s attorney.⁷⁹ According to the court, if a defendant is able to receive public records through the PRA, the reciprocal duty is not triggered and the prosecution does not receive the discovery it is entitled to under Crim. R. 16 from the defense. For these reasons, the Supreme Court of Ohio held that a criminal defendant may no longer use the PRA to obtain discovery and instead “may use only Crim. R. 16.”⁸⁰

3. *State v. Athon*

In 2013, the Supreme Court of Ohio was faced with a case that challenged the holding in *Steckman*. In *State v. Athon*, the defendant was

72. OHIO CRIM. R. 16(B)(6).

73. Aker, *supra* note 9, at 378.

74. *Steckman*, 639 N.E.2d at 90.

75. *Id.*

76. *Id.*

77. Aker, *supra* note 9, at 379.

78. *Id.*

79. OHIO CRIM. R. 16(H).

80. *Steckman*, 639 N.E.2d at 90.

charged with operating a motor vehicle while under the influence of alcohol, speeding, and failing to reinstate his driver's license.⁸¹ Deciding to forgo the discovery process under Crim. R. 16, the defendant's attorney asked a friend to make a public records request on the defendant's behalf for evidence related to the defendant's case.⁸² The State Highway Patrol provided the requested materials upon request, but the State of Ohio subsequently moved the trial court to compel the defendant to provide discovery because the defendant's public records request amounted to a demand for discovery and the reciprocal duty of disclosure was triggered under Crim. R. 16.⁸³ The Supreme Court of Ohio used this case to uphold its decision in *Steckman*, stating, "[I]n a criminal proceeding itself, a defendant may use only Crim. R. 16 to obtain discovery."⁸⁴ The court further held that "when an accused directly or indirectly makes a public records request for information that could have been obtained from the state through discovery, the public records request is the equivalent of a demand for discovery and the accused owes a reciprocal duty of disclosure to the state as contemplated by Crim. R. 16."⁸⁵

This Article focuses on the arguments advanced in the many amicus curiae briefs filed on the defendant's behalf by the Innocence Network, the Office of the Ohio Public Defender, and the Ohio Justice and Policy Center. In these briefs, the organizations argued that the *Steckman* holding violates a criminal defendant's constitutional rights, contradicts the Ohio General Assembly's intent, and prevents the Innocence Network from carrying out its purposes.⁸⁶ The Supreme Court of Ohio did not address any of these arguments when making its decision that the public records request made under the PRA was the equivalent of a demand for discovery under Crim. R. 16.

C. Criminal Defendants and Their Constitutional Rights

Under the United States Constitution, criminal defendants are guaranteed equal protection under the laws and a right to have legal counsel present. While the *Steckman* holding implicates both of these rights, no court, including the Supreme Court of Ohio, has analyzed how these rights are affected by it or entertained a challenge to *Steckman* on such grounds.

The Equal Protection Clause of the Fourteenth Amendment states, "No

81. *State v. Athon*, 989 N.E.2d 1006, 1008 (Ohio 2013).

82. *Id.*

83. *Id.*

84. *Id.* at 1010.

85. *Id.* at 1011.

86. *See infra* Part III.

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws.”⁸⁷ Similarly, the Constitution of the State of Ohio provides that “[a]ll political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary[.]”⁸⁸ In determining whether state legislation violates the Equal Protection Clause, courts apply different levels of scrutiny based upon the law’s classification or the right at stake.⁸⁹ The lowest level of scrutiny—rational basis review—“requires that a statutory classification be rationally related to a legitimate government purpose.”⁹⁰ The next level of scrutiny—heightened or intermediate scrutiny—is used when a discriminatory classification is based on sex or illegitimacy.⁹¹ Intermediate scrutiny requires that the classification be substantially related to an important government objective.⁹² The highest level of scrutiny—strict scrutiny—is used when classifications affect a fundamental constitutional right.⁹³ To pass strict scrutiny, a discriminatory classification must be narrowly tailored to serve a compelling state interest.⁹⁴ Thus, the government must prove that there is a compelling state interest behind the law and that the law is narrowly tailored to achieve its desired result.⁹⁵ If the proposed law can pass strict scrutiny, the court will allow the law to create a suspect class or even abridge a fundamental right.

The Sixth Amendment of the United States Constitution lists the rights an accused person has in all criminal prosecutions.⁹⁶ One of these is the right “to have the assistance of counsel for his defense.”⁹⁷ There is a similar provision in the Constitution of the State of Ohio, stating that “[i]n any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel.”⁹⁸ This right to counsel “includes the effective assistance of a lawyer both at trial and sentencing, as well as in

87. U.S. CONST. amend. XIV, § 1.

88. OH. CONST. art. I, § 2.

89. *State v. Thompson*, 767 N.E.2d 251, 255 (Ohio 2002).

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. Brett Snider, *Challenging Laws: 3 Levels of Scrutiny Explained*, FINDLAW (Jan. 27, 2014), http://blogs.findlaw.com/law_and_life/2014/01/challenging-laws-3-levels-of-scrutiny-explained.html.

96. U.S. CONST. amend. VI.

97. *Id.*

98. OH. CONST. art. I, § 10.

the investigatory and preparation phases leading up to trial.”⁹⁹ Prior to *Steckman*, the PRA provided a powerful vehicle for attorneys to gather all of the information necessary for trial.¹⁰⁰

III. DISCUSSION

Public offices and those responsible for public records often use the *Steckman* holding as a way to refuse release of the public records requested by criminal defendants.¹⁰¹ While there were two main rationales behind the *Steckman* holding, this Article focuses on the one used most often to deny a criminal defendant’s public records request. Using *Steckman*, these institutions argue that, since the criminal defendants attempted to use the PRA instead of Crim. R. 16 as the vehicle to obtain the public records, they are not compelled to disclose the records to the criminal defendants. However, there are a number of issues with this argument and *Steckman*’s holding that the following sections of this Article analyzes. The first and most important issue is the detrimental impact of *Steckman*’s holding on a criminal defendant’s constitutional rights. Not allowing criminal defendants access to public records using the PRA could violate both their Fourteenth Amendment right to equal protection and their Sixth Amendment right to effective assistance of counsel. Next, the focus turns to the legislative intent behind the PRA and how the post-*Steckman* amendments to Crim. R. 16 undermine the *Steckman* holding and further prove that the Ohio General Assembly’s idea of openness should be the Supreme Court of Ohio’s guiding principle when interpreting Ohio’s statutes. Finally, this section considers the public policy concerns and harmful implications that the court’s decision in *Steckman* has on the criminal justice system and society as a whole. If the court stood by its initial refusal to expand the PRA exemptions, criminal defendants would still be entitled to public records under the PRA.

A. Violating a Criminal Defendant’s Constitutional Rights

Prohibiting a criminal defendant from using the PRA to obtain public records impinges upon their fundamental rights under both the United States Constitution and Constitution of the State of Ohio. Under the

99. Brief of Amicus Curiae Ohio Justice & Policy Center in Support of Defendant-Appellee Gary Athon at 2, *State v. Athon*, 989 N.E.2d 1006 (Ohio 2013) (No. 12-0628).

100. Merit Brief of Amicus Curiae Office of the Ohio Public Defender in Support of Appellee Gary Athon at 5, *State v. Athon*, 989 N.E.2d 1006 (Ohio 2013) (No. 12-0628).

101. *See generally* *State v. Athon*, 989 N.E.2d 1006 (Ohio 2013); *State ex rel. Rasul-Bey v. Onunwor*, 760 N.E.2d 421, 422 (Ohio 2002).

Fourteenth Amendment of the United States Constitution and Article I and Section 2 of the Constitution of the State of Ohio, all citizens are afforded equal protection of the laws.¹⁰² Not allowing a single class of people—criminal defendants—to utilize a statute in the same way as any other citizen violates these Amendments. Also, both constitutions afford all persons the right to counsel. One of the key components of the right to counsel is the duty to investigate, which is seriously impeded by the *Steckman* holding.

1. Equal Protection

Both the United States Constitution and the Constitution of the State of Ohio afford all people equal protection of the law. Applying these provisions to the PRA, the right to obtain and inspect public records should apply equally to all people, including criminal defendants. The PRA itself expressly provides that “all public records responsive to the request shall be promptly prepared and made available for inspection to *any person*.”¹⁰³ Clearly, the Ohio General Assembly’s intent was to afford the right to access public records to all people, and denying this right to any class of people violates the Equal Protection Clauses of both constitutions.

The Supreme Court of Ohio has previously held that “the right to access conferred by [ORC section] 149.43(B) is a substantive right.”¹⁰⁴ Since the right to access is a substantive right, it cannot be abridged by Crim. R. 16.¹⁰⁵ Allowing a criminal defendant to obtain public records only through discovery pursuant to Crim. R. 16 “limits the ability of a criminal defendant to exercise fundamental, constitutional rights.”¹⁰⁶ Some of these fundamental rights include the right to gather news from any source provided by the law¹⁰⁷ and the right to monitor police officers and make sure they are adequately performing their responsibilities.¹⁰⁸ However, the *Steckman* holding created a classification of individuals—criminal defendants—who are no longer able to exercise these fundamental rights in the same way as any other citizen under the PRA. This kind of classification impinges upon a criminal defendant’s

102. U.S. CONST. amend. XIV., § 1; OH. CONST. art. I, § 2.

103. OHIO REV. CODE ANN. § 149.43(B)(1) (emphasis added).

104. State *ex rel.* Clark v. City of Toledo, 560 N.E.2d 1313, 1314 (Ohio 1990).

105. *Id.*

106. Merit Brief of Appellee Gary Athon at 8, State v. Athon, 989 N.E.2d 1006 (Ohio 2013) (No. 12-0628).

107. Houchins v. KQED, Inc. 438 U.S. 1, 11 (1978) (quoting Branzburg v. Hayes 408 US 665, 681–82 (1972)).

108. Merit Brief of Appellee Gary Athon, *supra* note 106, at 8 (citing to Glik v. Cunniffe, 655 F.3d 78 (1st Cir. 2011)).

fundamental right, and is subject to strict scrutiny,¹⁰⁹ which “demands that the . . . restriction ‘be narrowly tailored to serve a compelling state interest.’”¹¹⁰

Prohibiting criminal defendants from requesting public records under the PRA is neither narrowly tailored nor serves a compelling state interest. The Supreme Court of Ohio created a classification that subsequently prohibits an entire class of people from requesting a wide range of documents. A criminal defendant may be seeking these records for any number of reasons pertaining to their cases. Under the PRA, a person may request the records for any reason and does not have to disclose the reason. However, due to *Steckman*, having the “criminal defendant” status and requesting records to help with a defendant’s criminal case are enough of a reason to deny the request. *Steckman* requires a criminal defendant to reveal his or her status, and the “rights of an accused citizen to public records should not be hindered by his or her status as accused.”¹¹¹

To allow this classification and abridgment of fundamental rights, the government must prove that the *Steckman* holding prohibiting criminal defendants from using the PRA is narrowly tailored to achieve a compelling state interest.¹¹² The Supreme Court of Ohio’s desired result here was to prevent the “chaos” that was ensuing from the number of requests courts and police departments were receiving, the supposed delay that was caused, and the circumvention of Crim. R. 16.¹¹³ The broad holding and classification that the court created is not narrowly tailored to achieve the desired results. There are other more specific ways the court could have limited the number of requests and prevented delay. For example, the court could set a cutoff time for when a criminal defendant can no longer request public records pertaining to his or her case. That way, criminal defendants and their counsel would be entitled to an adequate amount of time to request the records during the investigatory and preparatory phases before trial. Once the trial date gets closer and it becomes more of a hassle for the police departments and courts to produce the records, the right could cut off. While this is still not an ideal answer to the court’s “problems” due to policy concerns, it is an example of the narrower means by which the court could have achieved its goals. Instead, the court’s holding “effectively triggers discovery in the event that the defendant makes any public records request

109. *Thorp v. Strigari*, 800 N.E.2d 392, 397 (Ohio Ct. App. 2003).

110. *Id.* (quoting *State v. Thompson*, 767 N.E.2d 251, 256 (Ohio 2002)).

111. Merit Brief of Amicus Curiae Office of the Ohio Public Defender, *supra* note 100, at 5.

112. *Snider*, *supra* note 95.

113. *State ex rel. Steckman v. Jackson*, 639 N.E.2d 83, 90 (Ohio 1994).

of any public body.”¹¹⁴ This is the complete opposite of what is meant by narrowly tailored.¹¹⁵

Additionally, the classification serves no compelling state interest. The Supreme Court of Ohio created such a broad exemption under the PRA because it felt that Ohio public offices and courts were spending too much time and resources trying to gather, produce, and comb through the public records, which slowed down the judicial process. This justification does not reach the level of compelling. The right to access information regarding one’s case strongly outweighs the court’s desire for convenience. As previously discussed, the public’s need for governmental transparency and its right to monitor government activity is essential to the proper working of a democracy.¹¹⁶ Furthermore, there is always the chance that the information contained in these public records could help prove innocence, or even affirm guilt.¹¹⁷ These two reasons alone are enough to overcome the state interest in convenience. More work for the courts and public offices is a necessary side effect to facilitate the more important goals of protecting the Ohio General Assembly’s intent of transparency and democracy and of revealing possibly crucial information to a criminal defendant’s case.

While the *Steckman* holding may have reduced the number of requests the courts and police departments receive, it created another problem by forcing criminal defendants to participate in discovery to obtain records they should be entitled to. The Supreme Court of Ohio tried to support its holding by arguing that criminal defendants were using the PRA to circumvent the rules of discovery and prevent the reciprocal discovery right of prosecutors from being triggered. However, “criminal defendants have a statutory right to forgo the discovery process.”¹¹⁸ Discovery is just one of the ways a criminal defendant may receive the information sought from the public records; however, it is ultimately the criminal defendant’s decision whether or not to participate in the discovery process or use other means, such as the PRA, to seek out the public records. Forcing a criminal defendant to participate in discovery to obtain public records that are essentially available to any other citizen is not a compelling state interest. It is more of a compelling state interest to protect criminal defendants’ statutory right to decide whether or not they want to participate in the discovery process.

114. Merit Brief of Appellee Gary Athon, *supra* note 106, at 9.

115. *Id.*

116. Brief of the Innocence Network as Amicus Curiae at 2, *State v. Athon*, 989 N.E.2d 1006 (Ohio 2013) (No. 12-0628).

117. *See generally id.*

118. Merit Brief of Appellee Gary Athon, *supra* note 106, at 9 (citing to *Weatherford v. Bursey*, 429 US 545, 559 (1997)).

In conclusion, the limitation in *Steckman* prohibiting criminal defendants from using the PRA created a suspect classification, which subsequently prevented only one large class of people from invoking their rights under the PRA. This classification and limitation on a certain class of people's rights does not pass the strict scrutiny evaluation. Therefore, it is an improper violation of criminal defendants' rights under the Equal Protection Clause.

2. Right to Counsel

Similar to equal protection, both the United States Constitution and the Constitution of the State of Ohio grant an accused person the right to counsel. With this right to counsel comes the right to have effective counsel in all phases of trial, including the investigative and preparative phases. Ohio's well-established precedent states that defense counsel has a duty to investigate the public records pertaining to the accused's case in order to be effective in both the investigatory and preparatory phases of trial. Prior to *Steckman*, there were different ways in which defendants and their counsel could obtain these types of records, and the PRA and Crim. R. 16 discovery were two of these options. While both the PRA and Crim. R. 16 require disclosure of similar reports and documents, the PRA does not trigger reciprocal discovery; Crim. R. 16 does. However, under the *Steckman* holding, defense counsel can no longer obtain these records through a public records request and instead must initiate the discovery process. If the defendant does not wish to initiate the discovery process, counsel may have no way to fulfill his or her duty owed to the defendant under the Constitution.

The Supreme Court of Ohio has previously held that a defense attorney "has a duty to investigate 'the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction.'"¹¹⁹ Even though the PRA is not the only means by which a criminal defendant may obtain public records, defendants and their attorneys may choose to avoid using discovery to prevent triggering the reciprocal discovery obligation and would therefore be less likely to fully investigate the case. With the *Steckman* holding limiting public records requests to only those allowed under Crim. R. 16, the court "eliminate[ed] a valuable tool for defense attorneys to properly investigate their clients' cases."¹²⁰ By not allowing criminal defendants or their defense attorneys to use the PRA, a criminal defendant's right to effective counsel under both the United States Constitution and

119. *State v. Johnson*, 494 N.E.2d 1061, 1063 (Ohio 1986).

120. Brief of Amicus Curiae Ohio Justice & Policy Center, *supra* note 99, at 3.

Constitution of the State of Ohio may be violated.

Overall, although it may have been unintentional, the Supreme Court of Ohio's holding in *Steckman* violated criminal defendants' rights under both the United States Constitution and Constitution of the State of Ohio. *Steckman*'s holding failed to pass the strict scrutiny evaluation required by the Equal Protection Clause because it was not narrowly tailored to serve a compelling state interest. Limiting a criminal defendant's right to access public records under the PRA also prevents a defense attorney from providing the effective counsel to which a defendant is constitutionally entitled. For these reasons, the *Steckman* holding was incorrect, and the issue of criminal defendants using the PRA should be reexamined.

B. Legislative Intent and Amendments to Crim. R. 16

When interpreting a statute, it is always important to look at the legislature's intent behind the statute. The PRA is meant to serve as a statutory grant of broad disclosure.¹²¹ The purpose behind the PRA is to promote open government and to allow for public scrutiny of the government by providing public access to the records. Neither of these purposes can be accomplished without supporting the underlying principle of the PRA: any person can request to inspect or obtain copies of public records for any reason. When a court reads into the PRA exemptions that are not there or expands already existing exemptions, it distorts legislative intent—amounting to judicial lawmaking—and it contravenes a fundamental jurisprudential principle.

With the *Steckman* holding, the Supreme Court of Ohio departed from its previous holdings that refused to expand the PRA's exemptions beyond their original intent and express language. In *Steckman*, the court did more than just expand an existing exemption. Instead, it created a new PRA exemption.¹²² The court concluded that Crim. R. 16 prevented criminal defendants from receiving records that the PRA would otherwise release.¹²³ Even routine police reports, whose disclosure was required under the court's previous rulings, were now "exempt [under the PRA] if they were subject to Crim. R. 16."¹²⁴ The PRA says nothing about prohibiting criminal defendants from using it as a means to obtain and inspect public records. The closest the PRA comes to mentioning criminal defendants is in subsection (B)(8), which deals with incarcerated individuals. This section provides that:

121. Merit Brief of Amicus Curiae Office of the Ohio Public Defender, *supra* note 100, at 4.

122. Aker, *supra* note 9, at 378.

123. *Id.*

124. *Id.* at 385.

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction . . . to inspect or obtain a copy of any public record concerning a criminal investigation or prosecution . . . unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person . . . finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.¹²⁵

Although this provision makes it more difficult for incarcerated individuals to obtain public records, it does not completely prohibit them from using the PRA. In comparison, the *Steckman* holding completely prevents criminal defendants from using the PRA. Applying one canon of statutory interpretation—*expressio unius*—the legislature considered to which classes of individuals, if any, the specific statutory exemptions would apply. The overly broad category of “criminal defendants” was not one of the classes of individuals the legislature chose to limit.¹²⁶ The legislature had every opportunity to make criminal defendants a class of people who were either entirely exempt from making public record requests or who had to jump through additional hoops to receive the records, similar to incarcerated individuals; however, it chose not to do so.¹²⁷

The Supreme Court of Ohio essentially rendered the PRA useless when it held that, if criminal defendants could access records through mutual discovery via Crim. R. 16, then they can no longer use the PRA. This was never the intent of the legislature. Although the PRA was once a statute that codified and promoted the Ohio General Assembly’s desire for openness and transparency, it became inundated with multiple exemptions that make it difficult, if not impossible, for an entire class of people to even utilize it to any degree.

The legislature’s policy of promoting open government was further exemplified in recent amendments to Crim. R. 16. In 2010, the Supreme Court of Ohio and the Ohio General Assembly filed amendments to Crim. R. 16 that called for a more open discovery process.¹²⁸ Under the 2010

125. OHIO REV. CODE ANN. § 149.43(B)(8).

126. *Expressio unius*, as a canon of statutory construction, means “that the expression of one subject, object, or idea is the exclusion of other subjects, objects, or ideas.” Clifton Williams, *Expressio Unius Est Exclusio Alterius*, 15 MARQ. L. REV. 191 (1931).

127. Merit Brief of Appellee Gary Athon, *supra* note 106, at 5.

128. *Supreme Court Submits ‘Open Discovery,’ Other Amendments to Rules of Practice and*

amendments, “the new discovery process would allow defense counsel access to materials that, under the [old] rule, prosecutors did not have to divulge.”¹²⁹ The purpose of these amendments was to “provide for a just determination of criminal proceedings and to secure the fair, impartial, and speedy administration of justice through the expanded scope of materials to be exchanged between the parties.”¹³⁰ These amendments officially transformed Ohio from a closed-file discovery system to an open-file discovery system.¹³¹

Steckman was decided while the old Crim. R. 16 was still in effect, which meant that the Supreme Court of Ohio was interpreting the PRA with a closed-file discovery system in mind. Looking at both the PRA and the newly amended Crim. R. 16, the legislature’s intent is clear. The legislature wanted to promote governmental transparency and disclosure and to allow for easier access to public records. The *Steckman* holding is not in line with the ideals behind an open-file discovery system. The Supreme Court of Ohio’s “post-*Steckman* adoption of an open-discovery in criminal cases, removed the logical underpinnings of *Steckman*’s interpretation of [Ohio Public Records Act].”¹³² While requesting a public record is neither a necessary part of a criminal proceeding nor properly termed ‘discovery,’ both of the “mechanisms seek to permit the exchange of information.”¹³³ The PRA and Crim. R. 16 do serve independent functions, but the legislature’s core purpose behind both of them was to increase the availability of public records to parties that need or desire them.¹³⁴ It is not the Supreme Court of Ohio’s job to disregard the legislature’s intent and subsequently keep Ohio citizens in the dark. With this shift towards open-file discovery, the court should be able to see how important the legislature views disclosure, and it should respect this view when interpreting the PRA. In the next section, the policy implications are analyzed to further show how important the PRA is to criminal defendants.

C. Policy Supports Allowing Criminal Defendants to Use the PRA

“Information is the most valuable currency available to an accused and his or her attorney, and a critical tool in the search for information is the

Procedure, THE SUPREME COURT OF OHIO & THE OHIO JUDICIAL SYSTEM (Apr. 28, 2010), http://www.sconet.state.oh.us/PIO/news/2010/ruleAmend_042810.asp.

129. *Id.*

130. Brief of the Innocence Network, *supra* note 116, at 8.

131. *Id.*

132. *Id.* at 10.

133. Merit Brief of Amicus Curiae Office of the Ohio Public Defender, *supra* note 100, at 4.

134. *Id.*

PRA.”¹³⁵ The records that criminal defendants request under the PRA oftentimes contain crucial information about their cases. The numerous Innocence Networks across the nation are huge supporters of state laws similar to Ohio’s PRA. These networks depend on public records to operate.¹³⁶ Records requested from police stations and similar organizations can “identify cases where there was evidence available for DNA testing, possible witness misidentification, inconsistent statements, police or prosecutorial misconduct, unreliable or informant testimony, false or fabricated claims, false confessions, identification of the actual perpetrator of the crime, or faulty ‘science.’”¹³⁷ Any of this information could provide the convicted inmate with a new argument to get his or her case back into court. Currently, there have been 1,874 exonerations in the United States,¹³⁸ and fifty-nine of them were in Ohio.¹³⁹ Many of these exonerations were possible because inmates were given an opportunity to review and to investigate critical documents, which were available to them by the states’ open public record laws.¹⁴⁰

Prior to *Steckman*, Ohio’s innocence networks, such as the Ohio Innocence Project and the Wrongful Convictions Project at the Ohio Public Defender’s Office, relied on the PRA to help them conduct meaningful investigations of old cases.¹⁴¹ The PRA allowed these organizations to obtain records concerning police investigations and trial proceedings of old criminal cases, which ultimately led to a number of exonerations.¹⁴² Not only do these organizations use public records to help prove claims of innocence, but they also use them “to convince inmates with specious claims of innocence that their cases are not meritorious.”¹⁴³ This is an important point to make because one of the Supreme Court of Ohio’s rationales for preventing criminal defendants from using the PRA was to save the courts from an overflow of frivolous and meritless claims.¹⁴⁴ Furthermore, the Ohio Innocence Project and the Wrongful Convictions Project use public records to advocate for legislative and administrative reform to help prevent wrongful

135. *Id.* at 5.

136. Brief of the Innocence Network, *supra* note 116, at 3.

137. *Id.* at 5–6.

138. *The National Registry of Exonerations*, UNIV. MICH. L. SCH., <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx> (last visited Sep. 2, 2016).

139. *The National Registry of Exonerations*, UNIV. MICH. L. SCH., <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=ST&FilterValue1=OH> (last visited Sep. 2, 2016).

140. Brief of the Innocence Network, *supra* note 116, at 3–4 n.5.

141. *Id.* at 3–4.

142. *Id.* at 4.

143. *Id.* at 5.

144. *Id.*; see also *State ex rel. Steckman v. Jackson*, 639 N.E.2d 83 (Ohio 1994).

convictions from happening in the first place.¹⁴⁵ For example, using information obtained through the PRA, the Ohio Innocence Project was able to “uncover serious failings in Ohio’s DNA testing policy and reveal the propensity of law enforcement officials to regularly destroy DNA evidence,” all of which led to legislation that changed Ohio’s evidence preservation practices.¹⁴⁶ Since the *Steckman* holding, these organizations are no longer able to request these important public records on behalf of their criminal clients. The reports sought could not only help free innocent people, but they also could benefit Ohio courts and society as a whole.

More importantly, it is “fundamentally unfair that an individual who most needs public records is denied them, but the rest of the world is granted full access to them.”¹⁴⁷ There are no other people in the world that would need those records more than the criminal defendants preparing their cases. Allowing criminal defendants access to these records gives them the best chance to fully prepare their cases, a constitutional right to which they are entitled. Preventing them from accessing these records essentially renders the records useless because there is likely no one else who cares enough to request them other than someone personally invested and advocating on behalf of the criminal defendant. This contravenes the purpose behind the PRA. Closing the records off to the people who need them the most does not promote openness, but instead has the opposite effect and keeps the records concealed from the public.

IV. CONCLUSION

The *Steckman* holding caused a lot of harm and hardship for criminal defendants. The Supreme Court of Ohio sought to prevent criminal defendants from using the PRA as a way to circumvent Crim. R. 16 and to keep the Ohio courts from being flooded with frivolous claims; however, it instead created a precedent that prevents an entire class of people from using a statute in the same way as the rest of the public. Most importantly, the *Steckman* holding raises constitutional issues: it violates a criminal defendant’s right to equal protection and to effective assistance of counsel. In regard to equal protection, it created a class that did not pass strict scrutiny. Instead of looking for a way to prevent criminal defendants from flooding the courts or from taking advantage of the PRA, the Supreme Court of Ohio chose a broad holding that discriminates against a large class of people. The holding in *Steckman* also prevents

145. Brief of the Innocence Network, *supra* note 116, at 7.

146. *Id.*

147. Merit Brief of Amicus Curiae Office of the Ohio Public Defender, *supra* note 100, at 5.

criminal defendants and their attorneys from being able to effectively investigate their cases. Defendants have a right to decide if they want to participate in formal discovery under Crim. R. 16, but under *Steckman*, they have no choice but to make a formal demand for discovery if they want to obtain the critical documents necessary to fully defend their cases. By denying criminal defendants equal protection of the law and by prohibiting them from using the PRA as a vehicle to defend their cases, the *Steckman* holding violates criminal defendants' constitutional rights.

Furthermore, Ohio organizations that seek to help those who have been wrongfully convicted, such as the Ohio Innocence Project, cannot effectively do their jobs without access to public records relating to the old cases they are investigating. Because these organizations represent and defend convicted criminals, they are not allowed to make requests for the records on the criminal defendant's behalf. These records have the potential to expose evidence available for DNA testing, possible witness misidentification, inconsistent statements, and many other important pieces of information that could help prove innocence or even reaffirm a defendant's guilt. Innocence networks also use the records to reform the legislation to help prevent wrongful convictions from happening at all. Without access to these public records, the Supreme Court of Ohio is allowing the types of injustices that wrongfully convicted inmates have faced to continue permeating in society.

Lastly, the *Steckman* holding is contradictory to the Ohio General Assembly's intent when it enacted the PRA. In the past, the Supreme Court of Ohio focused on transparency and an open government policy that was a guiding principle since the founding of this nation. It refused to expand on the exemptions found in the PRA, believing that the Ohio General Assembly had already carefully considered what it was they specifically sought to accomplish with the PRA. However, in *Steckman*, the Supreme Court of Ohio abandoned this long-standing principle and shifted away from transparency, which has long been the crux of an informed democracy. In conclusion, the Supreme Court of Ohio has created a dangerous precedent in *Steckman* that could lead to even less governmental transparency in the future.