

**IN THE COURT OF COMMON PLEAS
FOR FRANKLIN COUNTY, OHIO**

SHAWN K. BRUST
Marion Correctional Institution
P.O. Box 57
Marion, OH

and

MELISSA GRASA
Dayton Correctional Institution
4104 Germantown Road
Dayton, OH 45417

Plaintiffs,

v.

OHIO PAROLE BOARD
4545 Fisher Road, Suite D
Columbus, OH 43228

and

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION
4545 Fisher Road, Suite D
Columbus, OH 43228

Defendants,

Case No. _____

Judge:

Magistrate:

COMPLAINT

Plaintiffs Shawn Brust and Melissa Grasa bring this action for declaratory and/or injunctive relief against Defendants, the Ohio Parole Board and the Ohio Department of Rehabilitation and Correction. Plaintiffs allege as follows:

INTRODUCTION AND PRELIMINARY STATEMENT

1. This is a declaratory judgment action seeking, in part, a declaration by this Court that the Ohio Parole Board (the “Board”) and the Ohio Department of Rehabilitation and Correction (“DRC”) denied Plaintiffs Shawn K. Brust and Melissa Grasa meaningful consideration for parole, by applying practices and policies that violate Ohio law.

2. In the course of determining whether to grant parole to individuals who are eligible, Defendants routinely receive statements from victims, victims’ representatives, and/or family members of victims (together, “victim-related statements”), which are sent to the Office of Victim Services. Upon information and belief, such statements contain statements of purported fact that are submitted as though material to Defendants’ parole reviews, but that are sometimes false, misleading, and/or incomplete.

3. Defendants are authorized by law to release victim-related statements, including to the individuals who are under consideration for parole or to their counsel, subject to a few exceptions specified by statute. Under Defendants’ practices and/or policies, however, they do not release victim-related statements to individuals seeking parole, or to their counsel. Indeed, upon information and belief, Defendants always refuse to release victim-related statements to individuals seeking parole, or to their counsel. People seeking parole thus have no opportunity to review, contest, or contextualize any purported factual information contained in such statements, even in instances where the Board relies upon that purported information as the basis for a decision denying them parole.

4. The Supreme Court of Ohio has held that by setting up a parole system and defining the factors to be considered for parole, the state “has created a minimal due-process expectation that the factors considered at a parole hearing are ... to actually and accurately pertain to the

prisoner whose parole is being considered.” *State ex rel. Keith v. Ohio Adult Parole Auth.*, 141 Ohio St. 3d 375, 380, 2014-Ohio-4270, ¶ 25. By denying access to critical information that forms the very basis of many parole decisions—and in Plaintiffs’ case, the sole basis—Defendants’ policy and practice deny this due-process right.

5. Plaintiff Shawn Brust has served over 23 years of a 15-to-life sentence with a three-year gun specification, for the murder of Anthony Truss. After reviewing Mr. Brust’s record and conducting a suitability hearing, the Parole Board determined by an 8-0 vote that he was suitable for release and should be paroled. Subsequently, however, after Defendants received statements from Mr. Truss’s family, the Board reversed its decision, and denied Mr. Brust parole. Due to Defendants’ policy, Mr. Brust and his counsel had been denied any opportunity to view these victim-related statements. Upon information and belief, the content of those secret statements was an essential factor in the Board’s decision to reverse and deny parole to Mr. Brust.

6. Plaintiff Melissa Grasa has served over 25 years of a 20-to-life sentence for the aggravated murder of her physically, sexually, and emotionally abusive husband. After reviewing Ms. Grasa’s record and conducting a suitability hearing, a majority of the Board found her suitable for release. Subsequently, upon information and belief, Defendants received multiple letters from the decedent’s family members and friends, objecting to Ms. Grasa’s release. Pursuant to Defendants’ policy and practice, neither Ms. Grasa nor her counsel know exactly what information and allegations were conveyed in those victim-related statements. As it did with Mr. Brust, the Board reversed its original determination, and denied Ms. Grasa parole. Upon information and belief, the content of those secret communications was the basis for the Parole Board’s decision to reverse its earlier determination and deny parole to Ms. Grasa.

7. Defendants' policy and practice amount to a "victim veto." Victims' families or representatives can submit information in secret, with no opportunity for any response by the people being considered for parole. Worse, in practice, the victim opposition is treated by the Board as dispositive.

8. Plaintiffs were both denied meaningful consideration for parole as a result of Defendants' policy and practice. Plaintiffs seek a declaration from this Court that Defendants' policy of secrecy surrounding victim-related statements during the parole process is unlawful, and a declaration that Plaintiffs are entitled to review the victim-related statements that were submitted in their respective cases. Plaintiffs also seek appropriate injunctive relief, as necessary, to vindicate their right to meaningful consideration for parole.

THE PARTIES, JURISDICTION, AND VENUE

9. Shawn K. Brust (DRC #A364881) is currently incarcerated by the Ohio Department of Rehabilitation and Correction, housed at its Marion Correctional Institution at 940 Marion-Williamsport Road, Marion, Ohio 43302.

10. Melissa Grasa (DRC #W034713) is currently incarcerated by the Ohio Department of Rehabilitation and Correction, housed at its Dayton Correctional Institution, which is located at 4104 Germantown Street, Dayton, Ohio 45417.

11. The Ohio Parole Board (hereinafter, "the Board"), located at 4545 Fisher Road, Suite D, Columbus, Ohio 43228, is a statutorily-created, ten-member body charged with responsibility for conducting release consideration hearings on all parole-eligible inmates, pursuant to R.C. 5149.10.

12. The Ohio Department of Rehabilitation and Correction (“DRC”) is the agency charged with supervising and operating the state’s prison system, including the Ohio Parole Board. Its principal offices are located at 4545 Fisher Road, Suite D, Columbus, Ohio 43228.

13. This Court has jurisdiction over this matter pursuant to R.C. 2305.01, 2721.02(a), and 2721.12(A).

14. This Court is the proper venue for this action under Civ. R. 3(C)(1)-(3), as the defendant is located in Franklin County, has its principal place of business in Franklin County, and conducted activity there giving rise to this claim.

FACTUAL ALLEGATIONS

I. The Ohio Parole Board Voted Unanimously to Grant Parole to Shawn Brust, But Reversed Itself Based on Victim Representatives’ Statements, Which Remain Confidential Under Defendants’ Internal Policy.

15. Shawn Brust is a 59-year-old man who grew up in Ashville, Ohio. Before committing the crime that led to his incarceration, Mr. Brust was a union ironworker.

16. Mr. Brust’s life began to unravel when he became addicted to drugs, contributing to the offense he committed. On August 5, 1997, Mr. Brust shot and killed Anthony Truss.

17. Following trial, a jury convicted Mr. Brust of murder with a firearm specification, but acquitted him of aggravated murder and the drive-by specification. The trial judge sentenced Mr. Brust to 15 years-to-life for murder with an additional three years for the firearm specification.

18. In June 2015, the Board held Mr. Brust’s first parole consideration hearing. The Board denied parole at that time, noting that he “could benefit from additional programming to increase his insight into the offense.” The Board subsequently agreed to rehear Mr. Brust’s case. At the conclusion of the re-hearing, which occurred in 2018, the Board voted not to release Mr. Brust and set his next hearing for July 1, 2020.

Mr. Brust's Rehabilitation After His 2015 Hearing

19. In response to the Board's 2015 statement that he "could benefit from additional programming to increase his insight into the offense," Mr. Brust seized every opportunity that the corrections system offered to develop and strengthen his character, relationships, wisdom, and readiness to earn a living.

20. Among other accomplishments, Mr. Brust earned DRC's Certificate of Achievement and Employability ("CAE"), certifying that he has been fully rehabilitated and is poised to return to the community as a contributing citizen.

21. CAEs are awarded only upon completion of a highly rigorous screening process and demonstrated accomplishment in rehabilitation. They were created by statute in 2011 specifically as "a way for the [DRC] to indicate that a soon to be released inmate . . . has performed exceptionally while under DRC's control." To qualify, Mr. Brust had to: (a) complete one or more DRC-approved "in-prison vocational programs"; (b) complete "one or more cognitive or behavioral improvement programs" approved by DRC; (c) he had to "complete community service hours"; and (d) he had to "[show] other evidence of achievement and rehabilitation while under the jurisdiction of the department." R.C. 2961.22(A)(1). In addition, DRC policy requires disqualification from consideration for a CAE for any of a list of disciplinary actions occurring within the past two years.

22. Mr. Brust's application for a CAE had to—and did—receive approval at four successive levels of DRC hierarchy before being receiving final approval by the DRC Director herself. *See* DRC Policy 02-REN-05 (Sept. 7, 2015).

23. Indeed, Mr. Brust far surpassed the minimum DRC standards to earn a CAE in each category. For example, he has an exemplary disciplinary record, with no rules infractions since his 2015 hearing, and has maintained a Level 1 (minimum) security classification since 2013. He

has completed numerous DRC-approved programs, logged thousands of hours of meaningful rehabilitative work, performed thousands of hours of community service, and completed several job skills training programs. In what little spare time he has, he creates art, mostly paintings, which has further aided in his rehabilitation.

24. In sum, Mr. Brust is an example of what an inmate can accomplish through DRC's programming opportunities when such opportunities are available. Mr. Brust has been effectively rehabilitated and has matured over his 23 years in prison.

25. Mr. Brust has also demonstrated that he is ready to reenter society, as DRC itself has recognized. His Reentry Accountability Plan, a document created by DRC staff, indicates "no need for improvement" in each of eight areas of the "Dynamic Assessment" portion of the form: education; marital/family interaction; associates/social interaction; substance abuse; community functioning; personal/emotional orientation; attitude; and employment.

26. By awarding Mr. Brust a CAE, DRC has attested that he would be a safe hire for any employer in the fields for which he has trained. The CAE law provides an "absolute defense" against negligent hiring liability for any employer that hires him. R.C. 2961.23(B)(1). And indeed, Mr. Brust has lined up a number of employment opportunities with potential employers.

27. Mr. Brust also has three possible residences where he could live in Ashville, Ohio, with family members. All three residences would provide a safe and supportive environment for Mr. Brust. The family members in each case have eagerly volunteered to house Mr. Brust, and will support him financially until he achieves financial stability.

28. In sum, Mr. Brust is someone who has demonstrated beyond question his rehabilitation and his fitness to be safely released.

Mr. Brust's 2020 Parole Consideration

29. Parole consideration hearings in Ohio involve a two-step process. The first step is the institutional hearing, during which the person up for parole consideration meets alone, without counsel, with the Board. If the Board determines, by majority vote of the entire Board, that the incarcerated person is suitable for release, then the individual will be released on or after 60 days following the decision, unless DRC's Office of Victim Services ("OVS") objects and files a petition for a full board hearing.

30. The second step, a full board hearing, occurs only if a person was approved for parole by the Board, but a petition was filed by OVS and the Board votes to accept the petition. At the full board hearing, the individual being considered for parole can participate in the hearing by video conference if he chooses, and is permitted to have counsel plus two supporters speak on his behalf. The county prosecutor, along with two members of the victim's family, are allowed to speak in opposition to parole.

31. The Board held Mr. Brust's institutional hearing on May 21, 2020. By a unanimous 8-0 vote, the Board found him suitable for release, stating: "The Board finds that Offender Brust is a suitable candidate to be released on parole supervision at this time. He has served over 22.5 years on his 18-life sentence for murder that involved the senseless shooting death of a male victim. Offender Brust has utilized his time in prison well and has completed risk relevant programming to abate his risk to re-offend. Additionally, his conduct within the institution has greatly improved over the years and he has a supportive family with a realistic release plan."

32. In accordance with these stated reasons, the Board unanimously recommended parole pending a full board hearing determination. Since the Board issued this decision, none of the described factors favoring parole has been disputed, and none of them has changed.

33. On behalf of Mr. Truss's parents, OVS petitioned for a full board hearing. The Board voted to accept the petition and scheduled Mr. Brust's full board hearing for August 12, 2020.

34. Prior to the full board hearing, Assistant Prosecuting Attorney Sheryl L. Prichard wrote a letter to the Board expressing her office's position with respect to Mr. Brust's release. In relevant part, Ms. Prichard's letter states: "While the [Truss] family has not contacted me since 2015, I did speak with Mr. Truss, the father of the victim, at that time, and he voiced his opposition to the release of Brust. I have learned that the Truss family is again opposing Brust's release on parole. My office certainly respects the wishes of the family and places great importance on victims' rights and, therefore, supports the position of the Truss family. We also recognize the difficult and important job the Ohio Parole Board serves and are confident the Board will ensure that justice is achieved."

35. Upon information and belief, the Truss family submitted letters to the Board and/or DRC after Mr. Brust's institutional hearing and before his full board hearing, objecting to Mr. Brust's release. The contents of those letters were not disclosed to Mr. Brust or his counsel.

36. At the full board hearing, Mr. Brust's sister Michelle and her husband Lee appeared and spoke in favor of Mr. Brust's release. Mr. Brust's attorney also addressed the Board.

37. Assistant Prosecuting Attorney Prichard addressed the Board. Consistent with her letter, Ms. Prichard did not argue strenuously for parole to be denied and devoted most of her time to answering the Board's questions about the case.

38. Following Ms. Prichard's remarks, the parents of victim Anthony Truss spoke. Both urged the Board to deny parole. Neither parent mentioned any fact or event suggesting that

Mr. Brust might be a threat to the community or to any individual. In fact neither parent cited any act by Mr. Brust in the 23-plus years since he entered prison.

39. At the conclusion of the full board hearing, the Board voted 6-4 to deny Mr. Brust release.

40. At the full board hearing, the Board received no new information about the nature and seriousness of Mr. Brust's crime, no new information indicating a heightened risk of recidivism, and no new information casting doubt on the viability of Mr. Brust's reentry plan.

41. If the Board received any such information, it can only have appeared in the victim-related submission that was submitted to the Board, and which the Board refused to disclose to Mr. Brust or his counsel.

*Mr. Brust Was Denied Parole Based on Unknown Victim Statements,
Creating a "Victim Veto."*

42. Full board hearing documents fall into one of two categories: materials subject to disclosure under Ohio's public records law, and those which the Board considers confidential and not subject to disclosure.

43. Pursuant to internal policy, the Board and DRC consider statements by victims' families or representatives to be in the latter category. The Board and DRC treat such statements as strictly secret, and will not voluntarily disclose their contents to either the person being considered for parole or that individual's counsel, under any circumstances. Any request by the individual under consideration or by their counsel seeking disclosure of such statements is futile.

44. In contrast, the Board considers pre-full board hearing filings by the inmate's attorney and the prosecutor to be public records and discloses each attorney's submissions to opposing counsel.

45. Due to the Board's internal policy, neither Mr. Brust nor his counsel know what Mr. Truss's family said to the Board in their written submissions. As a result, neither Mr. Brust nor counsel had any ability to rebut, explain, or contextualize any allegations in those submissions.

46. To the extent that there are inaccuracies, misstatements, or falsehoods contained in the Truss family submissions, the Board's policy of absolute confidentiality has effectively prevented Mr. Brust and his counsel from correcting them.

47. Upon information and belief, rather than basing its decision on whether Mr. Brust had rehabilitated himself and could safely be released, the Board instead denied him release based, in part, on information contained in the Truss family's secret written submissions.

48. As a practical matter, the Board effectively allowed Mr. Truss's family to use secret information not available to Mr. Brust to veto the Board's earlier finding that Mr. Brust was suitable for release.

49. The Board cites R.C. 5120.60(G) as the basis for treating all victim-related statements as confidential and not disclosing any of them to parole candidates or their counsel.

50. Nothing in R.C. 5120.60(G) supports Defendants' policy of absolute confidentiality in all circumstances. Rather, that section only authorizes confidentiality of statements by victims' representatives where those statements are: "provided ... for the purpose of program participation, of receiving services, or to communicate acts of an inmate . . . that threaten the safety and security of the victim[.]"

51. Upon information and belief, the written material provided to the Board by the Truss family was not for the purpose of program participation or receiving services. Thus, the only lawful basis for the Board's maintaining the confidentiality of such information would be if it communicated "acts of [Mr. Brust] that threaten[ed] the safety and security" of the Truss family.

52. Mr. Brust poses no risk to the surviving members of the Truss family and has never threatened any of them.

53. If members of the Truss family in fact alleged that Mr. Brust threatened their safety or security, such information would have been false. The Board had reason to know it was false because no such information had been presented previously, including on the occasion of the pre-hearing Victim's Conference. The Parole Board exceeds its authority and denies meaningful consideration when it relies on information that it knows or has reason to know is inaccurate. Mr. Brust, through his counsel, should have been given the opportunity to dispute and correct any such misinformation.

54. On the other hand, if the written information the Truss family provided to the Board did not allege threats to their safety but instead concerned other reasons why they believed Mr. Brust was not suitable for parole, then that information was not confidential under Ohio Revised Code 5120.60(G) and should have been provided to Mr. Brust and his counsel so that they could respond to the assertions made.

55. In either scenario, the Board's decision to withhold from Mr. Brust and his counsel the information Mr. Truss's family submitted before the full board hearing deprived Mr. Brust of his right to meaningful consideration for parole.

II. The Ohio Parole Board Voted to Grant Parole to Melissa Grasa, But Again Reversed Itself Based on Victim's Representative Statements, Which Remain Confidential Under Defendants' Internal Policy.

56. Melissa Grasa is a 53-year-old woman who grew up in Middletown, Ohio.

57. In 1987, shortly before her twentieth birthday, Melissa married Mike Grasa, Jr. (hereafter "Mike" or "the decedent"). Shortly after they got married, Mike began physically

abusing Melissa. In many instances, Mike would follow his abuse with apologies and promises that it would never happen again.

58. This pattern of physical abuse and apology recurred over the six years of their marriage with escalating frequency. The beatings left Melissa with black eyes, broken lips, bruised ribs, and fractured teeth. There were also times when Mike either raped or attempted to rape Melissa. With one or two exceptions, Melissa protected Mike by refraining from calling police, hiding her injuries, and making up stories to keep people from learning of his abuse.

59. Mike's physical abuse of Melissa was accompanied by severe verbal and emotional abuse. He also limited her interactions with family, would not let her work outside the home, tapped the family's phone in order to listen in on her calls, and even had her followed.

60. Mike's abuse of Melissa fit what experts describe as a classic pattern or cycle of domestic abuse, where the batterer beats his victim, and then apologizes and promises that he will never do it again. Victims in such a pattern frequently feel a distorted feeling of responsibility for their own battering, accept the assailant's purported contrition, and/or fear what will happen to them and their children if they leave. By 1993, Melissa was the principal caregiver for her three small children, including her son Nathan from her first marriage and two daughters from her marriage to Mike.

61. Mike's previous wife, Kelly Williams, testified at Melissa's trial that Mike had physically abused her also, following a similar pattern to Mike's abuse of Melissa.

62. Shortly after one of Mike's physical assaults, Melissa discovered that Mike was having an affair. Melissa's trial experts would later testify that from the time she first learned of Mike's affair, through the days and weeks that followed, she was experiencing a dissociative state, in which she frequently became cognitively distant and lost touch with reality.

63. Melissa subsequently met with Ron Branham, a close friend. They talked about killing Mike, and Branham agreed to kill him. Melissa later recalled that during this interaction with Branham, she felt as though she were watching herself from a distance.

64. Melissa also went to speak to her lawyer about divorcing Mike, stating that she was “tired of being a punching bag.” Somehow Mike found out about Melissa’s meeting with her lawyer. He angrily confronted her, slammed her against a wall, and threatened to kill her and her son Nathan if she chose to pursue divorce.

65. On the night of December 1, 1993, Melissa assisted Branham as he hid in the Grases’ basement, came upstairs during the night, and killed Mike as he lay sleeping. Melissa would later confess to her own and Branham’s roles in Mike’s death.

66. The primary issue at Melissa’s trial was not whether Mike had beaten her—there was ample evidence that he had—but whether as a result of Battered Women’s Syndrome, she knew right from wrong at the time of the decedent’s death. The jury convicted her of aggravated murder, and the judge sentenced her to a prison term of 20 years to life.

Ms. Grasa’s Rehabilitation

67. Ms. Grasa’s first parole hearing was in May 2008. Although the Board noted that Ms. Grasa’s institutional conduct was “superior” and that her institutional programming was “good,” it denied release “due to the serious nature of the offense,” and continued her next hearing six years to July 2014. In 2014, the Board again denied release, stating that release at that time “would demean the seriousness of the offense[] and not further the interest of justice.” The Board continued Ms. Grasa’s next hearing another six years to July 2020.

68. Ms. Grasa has taken advantage of every opportunity available during incarceration to improve herself through rehabilitative programming. Among many other programs, Ms. Grasa

has completed Victim Awareness, Anger Management, CHOICES Violence Education Program, Visions Beyond Survival, L.I.F.E Group, Outreach F.I.V.E., Boundary Power, Grief & Loss Mental Health Group Sessions, and Nonviolent Communication, as well as substance abuse programs such as Alcohol & Other Drugs, AA/NA programs, Smoking Cessation, and Life Without a Crutch.

69. She has also received the counseling and psychotherapy necessary to treat her PTSD and episodes of depression and eating disorder, all of which stemmed from her abuse by the decedent.

70. Additionally, since June 2018, Ms. Grasa has resided in her prison's Reintegration Unit, which features programming designed to help residents reenter the community successfully. Residents are selected for the reintegration unit based on several factors including discipline record and staff recommendation. There, Ms. Grasa has taken additional programs such as: Impact of Crime on Victims (ICV), Responsibility, Remorse, & Rehabilitation, and Thinking for a Change.

71. Throughout her prison sentence, Ms. Grasa has demonstrated exemplary behavior. She has been disciplined only five times in over 26 years, and only for minor offenses. She has never been placed in administrative segregation and has maintained the lowest security level since 2014.

72. Ms. Grasa has logged over two thousand hours of community service volunteering for various projects and has received commendations for her volunteerism. She has also used her experience to help others who are suffering domestic violence.

73. Ms. Grasa also has a strong and verifiable reentry plan. If released, Ms. Grasa would live with either her father or her sister in Middletown, Ohio, or her brother in Trenton, Ohio.

She has been offered employment at a business owned by her sister. Ms. Grasa also has a church community willing to support her upon release.

Ms. Grasa's Initial 2020 Parole Consideration

74. The Board held Ms. Grasa's institutional hearing on June 16, 2020. Ten of the eleven members then serving on the Board participated in that hearing. By a 6-4 majority vote, the Board determined that she was suitable for release, stating: "The Board finds that Offender Grasa has served a sufficient portion of her sentence, has completed programming to abate her risk to re-offend, and has a supportive release plan, thereby rendering her suitable for release onto parole supervision at this time."

75. Some members of the decedent's family objected to Ms. Grasa's release and petitioned, through the Office of Victims Services, for a full board hearing. The Board granted the petition and set a full board hearing for September 16, 2020.

76. Upon information and belief, the decedent's family and others submitted letters or other communications to the Board and/or DRC after Ms. Grasa's institutional hearing and before her full board hearing, objecting to Ms. Grasa's release. Pursuant to its internal policy, as with Mr. Brust, the Board and DRC treated all such documents in Ms. Grasa's case as secret, and refused to disclose their contents to either Ms. Grasa or her counsel.

77. At the full board hearing three of the decedent's close family members offered support for Ms. Grasa's release.

78. The decedent's sister Michelle Thomas, submitted a sworn statement to the Board stating: "Enough is enough. Melissa Grasa has served enough time. She deserves a chance to be part of the lives of her daughters and grandchildren" and "...I no longer hold any hatred for Melissa Grasa about Michael's death. I was more angry with her because her actions left their children

Nathan, Ashlie and Amanda without parents...What happened can't be changed, but Melissa Grasa has paid dearly for what happened. not having her kids in her life and losing her son Nathan.”

79. In addition, both of Mike and Melissa's daughters, Amanda Neeley and Ashlie Grasa, supported their mother's release. Amanda submitted a letter to the Board asking the Board to release Ms. Grasa, and Ashlie spoke at the full board hearing arguing for their mother's parole.

80. Two other members of the victim's family spoke at the hearing to oppose release. They made clear their belief that Ms. Grasa should never be released, a point the prosecutor echoed.

81. At the conclusion of the full board hearing, the Board voted 6-4 to deny Ms. Grasa parole.

82. From the time the Board concluded by majority vote that Ms. Grasa was suitable for release pending a full board hearing, through the conclusion of the full board hearing, the Board received no new information about the nature and seriousness of Ms. Grasa's crime, no new information indicating a heightened risk of recidivism, and no new information casting doubt on the viability of Ms. Grasa's reentry plan. If the Board received any such information, it can only have appeared in victim-related submissions to the Board, which the Board refused to disclose to Ms. Grasa or her counsel.

83. Under the Board's internal policy, neither Ms. Grasa nor her counsel know exactly what the decedent's family and friends said to the Board in their written victim related statements. As a result, neither Ms. Grasa nor counsel had any ability to rebut, explain, or contextualize any allegations in those submissions.

84. To the extent that there are inaccuracies, misstatements, or falsehoods contained in the submissions, the Board's policy of absolute confidentiality has effectively prevented Ms. Grasa and her counsel from correcting them.

85. Upon information and belief, rather than basing its decision on whether Ms. Grasa had rehabilitated herself and could safely be released, the Board instead denied her release based on information and allegations contained in the objections and written submissions by the decedent's family and others.

86. As a practical matter, the Board effectively allowed a faction of the decedent's family to secretly veto the Board's earlier finding that Ms. Grasa was suitable for release.

87. As with Mr. Brust, the Board in Ms. Grasa's case relied upon Ohio Revised Code 5120.60(G) as the basis for withholding as "confidential" all victim-related statements submitted before the full board hearing; but nothing in that provision supports Defendants' policy of absolute confidentiality in all circumstances.

88. Upon information and belief, the victim-related statements received by the Board in Ms. Grasa's case were not for the purpose of program participation or receiving services. Thus, the Board's only lawful basis for maintaining the confidentiality of such information was if it communicated "acts of [Ms. Grasa] that threaten[ed] the safety and security" of the decedent's family.

89. Ms. Grasa poses no risk to the decedent's surviving family and has never threatened any of them.

90. If members of the decedent's family in fact alleged that Ms. Grasa threatened their safety or security, such information would have been false. The Board had reason to know it was false because no such information had been presented previously, including on the occasion of the

pre-hearing Victim's Conference. The Parole Board exceeds its authority and denies meaningful consideration when it relies on information that it knows or has reason to know is inaccurate. Ms. Grasa, through her counsel, should have been given the opportunity to dispute and correct that misinformation.

91. On the other hand, if the information the decedent's family submitted did not allege threats to their safety but instead concerned other reasons why they believed Ms. Grasa was not suitable for parole, then that information was not confidential under Ohio Revised Code 5120.60(G) and should have been provided to Ms. Grasa and her counsel so they could respond to those assertions.

92. In either scenario, the Board's decision to withhold from Ms. Grasa and her counsel the victim-related statements submitted before the full board hearing deprived Ms. Grasa of meaningful consideration for parole.

Ms. Grasa's Rehearing

93. At the full board hearing, several members of the Board indicated they believed that the jury, in convicting Ms. Grasa, found that she had not been abused by the decedent.

94. Additionally, following remarks by one of the decedent's relatives who opposed Ms. Grasa's release, Board Member Tracy Reveal said, "Thank you for clearing up those unsubstantiated allegations," referring to Ms. Grasa's claim that the decedent had abused her. In so stating, Board Member Reveal ignored eyewitness testimony and substantial other evidence from the trial that corroborated the decedent's abuse of Ms. Grasa.

95. Following Ms. Grasa's September 2020 parole denial, her counsel obtained an affidavit from one of Ms. Grasa's trial jurors, stating: "During our deliberations, there was widespread agreement among the jurors that Melissa was violently abused by her husband during

their marriage.” Further, the juror averred: “The only real issue in dispute was whether Melissa was legally insane, meaning she did not know right from wrong at the time of the killing. Although many, if not all, of us believed Melissa had suffered repeated abuse during her marriage, we ultimately concluded, based on the evidence we heard, that she knew right from wrong at the time of her husband’s death and convicted her of aggravated murder. But the fact that we rejected Melissa’s insanity defense in no way means we disbelieved her claims of abuse, which we found credible.” The juror concluded: “Many of us wished we would have had the opportunity to consider convicting Melissa of manslaughter.”

96. Based on this affidavit, a majority of the Parole Board voted to rehear Ms. Grasa’s case, and scheduled her for a full board re-hearing on March 16, 2021.

97. Before the March 16 rehearing, Ms. Grasa’s legal team requested that the Parole Board disclose all documents submitted by the victim’s family to the Board prior to the hearing. Board staff indicated that the Board would not provide documents submitted by the victim’s family.

98. Upon information and belief, the Board’s refusal to provide these documents arose, again, from its internal policy of absolute confidentiality for victim-related statements. Under that policy, any request for disclosure of such documents is futile.

99. Before the re-hearing, Ms. Grasa’s legal team obtained and submitted to the Board an affidavit from a second juror. The second juror stated, “I personally had no doubt that Melissa Grasa was beaten and abused by her husband, Michael Grasa Jr. I remember that there was evidence that he had pulled out her hair among other abuse.” The second juror concluded: “I remember being surprised by the reports in the news after the trial. They did not present Michael

Grasa Jr. in the same light that we saw at trial, where the evidence indicated that he abused Melissa Grasa.”

100. Two members of the victim’s family spoke at the rehearing: a cousin named William and a daughter named Lori from his first marriage to Kelly Williams. Both William and Lori claimed that the victim’s father, Mike Grasa, Sr., was unable to attend the hearing because he was in the hospital suffering from “broken heart” syndrome.

101. Lori made a number of unsupported allegations at the hearing that, upon information and belief, were false. These include (a) contradicting Michelle Thomas’s sworn written statement to the Board, to assert that Ms. Thomas, the victim’s sister, did not support Ms. Grasa’s release and had signed a petition urging the Board to deny parole; (b) that Ms. Grasa’s daughter Amanda Neeley had threatened to burn down Lori’s house; (c) that Lori’s mother Kelly Williams had always had an amicable relationship with Mike Grasa, contrary to Ms. Williams’ own trial testimony that the decedent had physically, sexually and emotionally abused her during their marriage; (d) that Ms. Grasa was currently in contact with her co-defendant, Ron Branham; and (e) that Ms. Grasa, if released, would put Lori’s life at risk.

102. Upon information and belief, before the March 16 rehearing, certain family members and friends of decedent, including Lori and William, submitted to the Board written and other materials opposing Ms. Grasa’s release.

103. As a result of not obtaining the written documents submitted by individuals who opposed her release, Ms. Grasa and her legal counsel were not able to prepare to address many of the false claims asserted by members of the decedent’s family during the hearing.

104. Following the rehearing, by a 6-3 vote, the Board again denied parole on the basis that “the additional information presented at the hearing was not sufficient to overcome the unique

factors of the offense and release at this time would not further the interests of justice nor be consistent with the welfare and security of society.”

105. After the hearing, Ms. Grasa’s legal team began the process of trying to debunk some of the false statements Lori made at the hearing. As part of that effort, a member of the team communicated with Michelle Thomas, who denied ever signing a petition requesting that the Board deny parole. Ms. Grasa’s legal team is working to debunk Lori’s other false claims.

COUNT ONE – DECLARATORY JUDGMENT THAT DEFENDANTS’ POLICY HAS DENIED PLAINTIFFS MEANINGFUL CONSIDERATION FOR PAROLE

106. Plaintiffs adopt and incorporate the allegations set forth in the foregoing Paragraphs of this Complaint as though fully set forth herein.

107. Under well-settled principles of Ohio law, individuals who are eligible for parole must receive meaningful consideration for parole.

108. Although Ohio recognizes no due process right to parole itself, the Supreme Court of Ohio has held that there is a “minimal due process expectation that the factors considered at a parole hearing are to be as described in the statute or rule and are to factually and accurately pertain to the prisoner whose parole is being considered.” *State ex rel. Keith v. Ohio Adult Parole Auth.*, 141 Ohio St. 3d 375, 2014-Ohio-4270, ¶ 25.

109. In order to effectively exercise the recognized right to meaningful consideration for parole, and in order to vindicate the “minimal due process expectation” recognized by the Supreme Court of Ohio, a prisoner is entitled to review the reports, documents, and other written information considered by the Board at a parole hearing. In order to ensure an opportunity to respond to the purported facts contained in such documents, they must be disclosed in advance of a full board hearing.

110. Information that is provided to the Board may not properly be withheld as “confidential” when nothing on the record of the parole proceeding actually supports the Board’s decision to withhold it.

111. Defendants’ policy, under which they uniformly refuse to disclose any written statements by a deceased victim’s family members or supporters who oppose parole, regardless of individual circumstances, has denied Plaintiffs and their counsel any opportunity to inform the Board of any errors in those statements.

112. Defendants’ policy infringes upon Plaintiffs’ right to meaningful consideration for parole, and violates Plaintiffs’ expectations of due process as recognized by Ohio law.

113. By denying Plaintiffs parole without giving either of them the opportunity to address the secret information submitted by victims’ representatives, family members, or others, the Board denied Plaintiffs meaningful consideration for parole.

114. There is a real and justiciable controversy between Plaintiffs and Defendants, concerning whether Defendants’ policy of maintaining absolute confidentiality over written statements submitted by individuals opposing release constitutes a denial of meaningful consideration for parole.

115. Further, there is a real and justiciable controversy between Plaintiffs and Defendants concerning whether the Board denied Plaintiffs meaningful consideration for parole, by failing to afford Plaintiffs an opportunity to review and address statements submitted to Defendants by victims’ representatives, family members or others.

116. The rights, status, and other legal obligations of Plaintiffs and Defendants are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy which has given rise to this proceeding. In the alternative, Plaintiffs

reserve the right to pursue injunctive relief, including pursuant to R.C. 2721.09, as necessary to preserve their rights.

COUNT TWO – DECLARATORY JUDGMENT THAT PLAINTIFFS ARE ENTITLED TO REVIEW VICTIM STATEMENTS

117. Plaintiffs adopt and incorporate the allegations set forth in the foregoing Paragraphs of this Complaint as though fully set forth herein.

118. Defendants have the authority to consent to the release of written statements submitted by victims' representatives or family. In addition to the requirement under *Keith* that these materials be disclosed, this Court has statutory authority to order their release. R.C. 5120.21(D)(5).

119. Under their confidentiality policy and citing R.C. 5120.60(G), Defendants have refused to exercise their disclosure authority in the course of Plaintiffs' parole consideration. Upon information and belief, Defendants systematically refuse to exercise that authority in the course of any parole consideration.

120. At least with respect to Mr. Brust and Ms. Grasa, the materials withheld do not meet any of the criteria for secrecy set forth in R.C. 5120.60(G). Defendants have no lawful basis for withholding such materials from Mr. Brust, Ms. Grasa and their counsel.

121. Plaintiffs are entitled to the release of these materials to themselves and/or their counsel, in a fashion that would timely afford an opportunity to ascertain the presence and extent of inaccurate, misleading, and/or incomplete information, and to respond in the course of Plaintiffs' consideration for parole.

122. There is a real and justiciable controversy between Plaintiffs and Defendants, concerning whether Plaintiffs are entitled to the release of these materials to themselves and/or their counsel.

123. The rights, status, and other legal obligations of Plaintiffs and Defendants are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy which has given rise to this proceeding. In the alternative, Plaintiffs reserve the right to pursue injunctive relief, including pursuant to R.C. 2721.09, as necessary to preserve their rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Shawn Brust and Melissa Grasa demand judgment in their favor and against Defendants, the Ohio Parole Board and the Ohio Department of Rehabilitation and Correction, as follows:

- A. A declaration by this Court that Defendants' policy of refusing to disclose written statements by victims' representatives or families violates the rights of Plaintiffs, and others similarly situated, to meaningful consideration for parole;
- B. A declaration by this Court that Plaintiffs are entitled to the release of such written statements to themselves and/or their counsel, in a fashion that would timely afford an opportunity to ascertain the presence and extent of inaccurate, misleading, and/or incomplete information contained in those statements, and to respond;
- C. As necessary, entry of a permanent injunction pursuant to R.C. 2721.03 and 2721.09, requiring Defendants to cease implementation of their policy, and to release to Plaintiffs all such written statements that were received in the course of Plaintiffs' respective parole considerations;
- D. Award of attorney fees, expenses, and other court costs as provided by law; and
- E. Such other and further legal and equitable relief as the Court deems just, equitable, and proper.

Dated: May 13, 2021

Respectfully submitted,

/s/ David A. Singleton

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