

ORIGINAL

IN THE
SUPREME COURT OF OHIO

CYNTHIA C. LAMBERT : NO. 2008-2183
Plaintiff-Appellee : On Appeal from the Hamilton County
Court of Appeals, First Appellate
vs. : District
GREG HARTMANN [PATRICIA M. : Court of Appeals
CLANCY], HAMILTON COUNTY : Case Number C-0700600
CLERK OF COURTS :
Defendant-Appellant

**REPLY BRIEF OF DEFENDANT-APPELLANT GREG HARTMANN/PATRICIA M.
CLANCY, HAMILTON COUNTY CLERK OF COURTS**

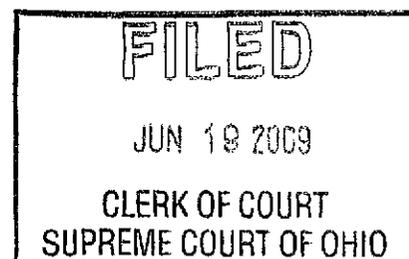
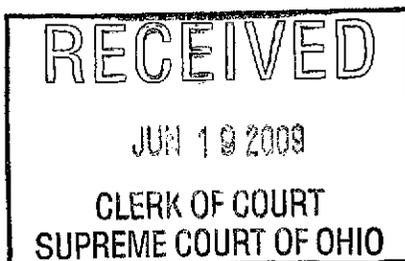
Joseph T. Deters (0012084P)
Prosecuting Attorney

Michael G. Florez (0010693)
Pamela J. Sears (0012552)
Assistant Prosecuting Attorneys
Counsel of Record

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3082 (Sears)
(513) 946-3229 (Florez)
Fax No. (513) 946-3018

COUNSEL FOR DEFENDANT-APPELLANT, GREG HARTMANN/PATRICIA M. CLANCY,
HAMILTON COUNTY CLERK OF COURTS

Marc D. Mezibov (0019316)
Stacy A. Hinnars (0076458)



Attorneys at Law
 Law Office of Marc Mezibov
 401 E. Court Street, Suite 600
 Cincinnati, Ohio 45202
 (513) 621-8800
 FAX (513) 621-8833

COUNSEL FOR PLAINTIFF-APPELLEE, CYNTHIA C. LAMBERT

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	iv
ARGUMENT	2
FIRST PROPOSITION OF LAW	2
Immunity from Suit Pursuant to R.C. 2744.02 is Available to Elected Officials Sued in Their Official Capacities.	
A. The issue in this case concerns the immunity of Hamilton County pursuant to R.C. 2744.02 and not the personal, individual liability of Greg Hartmann	6
1. A plain reading of the Complaint indicates that Hartmann was made a party to this suit in his official capacity	3
2. Appellee did not argue at the trial or appellate court level that she is suing Hartmann as an individual, only that as an elected official the clerk of courts cannot be immune pursuant to R.C. 2744.02 because he is an employee by definition and not a political subdivision.....	6
3. Appellant is not appealing to public policy but to a plain reading of the intent of R.C. 2744.02	10
CONCLUSION	10
CERTIFICATE OF SERVICE	12
APPENDIX	
Verified Class Action Complaint with Jury Demand, Lambert v. Greg Hartmann, Hamilton County Clerk of Courts, 1:04CV837 (December 20, 2004)	A-1

**Transcript of Proceedings, *Lambert v. Greg Hartmann, Hamilton County*
Clerk of Courts, A0700787**

(July 11, 2007) A-2

TABLE OF AUTHORITIES

<u>CASES:</u>	<u>PAGE</u>
<i>Clark v. Dublin</i> , (Ohio App. 10 th Dist. 2002), 2002 WL 465013, at 11	5
<i>Cramer v. Auglaize Acres</i> (2007) 113 Ohio St. 3d 266, 865 N.E.2d 9.....	9, 10
<i>Fabrey v. McDonald Village Police Dept</i> (1994), 70 Ohio St.3d 351, 356, 639 N.E.2d 31	7
<i>Green County Agricultural Society v. Liming</i> (2000), 89 Ohio St.3d 551, 556-57, 733 N.E.2d 1141.....	8
<i>Rankin v. Cuyahoga County Department of Children and Family Services</i> (2008), 118 Ohio St.3d 392, 398, 889 N.E.2d 521	9
 <u>STATUTES:</u>	
42 U.S.C. 1983.....	5
R.C. 2305.10	5
R.C. 2744.01	6, 7, 10
R.C. 2744.01(F)	8
R.C. 2744.02	2, 3, 5, 6, 7, 8, 9, 10
R.C. 2744.02(B).....	8, 10
R.C. 2744.03	8
R.C. 2744.03(A)(6)	5, 6, 7, 9
R.C. 2744.07	10
R.C. 3121.17(I)(1).....	4
R.C. 3721.10(A).....	9
R.C. 3721.17(I)(1).....	9
 <u>COURT RULES:</u>	
Ohio R. Civ. P 25(D)	3

ARGUMENT

FIRST PROPOSITION OF LAW

IMMUNITY FROM SUIT PURSUANT TO R.C. 2744.02 IS AVAILABLE TO ELECTED OFFICIALS SUED IN THEIR OFFICIAL CAPACITIES.

A. THE ISSUE IN THIS CASE CONCERNS THE IMMUNITY OF HAMILTON COUNTY PURSUANT TO R.C. 2744.02 AND NOT THE PERSONAL, INDIVIDUAL LIABILITY OF GREG HARTMANN

In Plaintiff-Appellee Cynthia Lambert's ("Appellee") Merit Brief, Appellee reassembles the argument to focus on the individual liability of Greg Hartmann ("Hartmann"), the former clerk of courts in Hamilton County.¹ The problem with the reassembly is that Hartmann was not sued individually as is clear from a reading of the complaint.² This case does not concern the personal liability of Hartmann, but rather the liability of Hamilton County. Hartmann, individually and personally, is not a party to this action.³

1 One need only compare the argument in Appellee's merit brief to the argument in Appellee's memorandum in opposition to jurisdiction (T.d. 3, at 4) to illustrate that Appellee has completely abandoned the position she took in the trial and appellate courts below.

2 Further if Appellee had sued Hartmann individually, Appellant's Rule 11 motion would have been litigated to conclusion since facts known to Lambert vitiate a good faith position that Hartmann, personally and individually, acted willfully and wantonly in his policy decisions as the clerk of courts. Rather, uncontroverted testimony developed in discovery by the parties to this action in the preceding federal case are that Hartmann acted in accordance with his interpretation of the law, that he sought guidance from this Court, that he solicited new legislation to address the tension between public record laws and privacy concerns but that legislation was blocked in part by the Ohio Judicial Council, that he was told by the presiding judge, Judge Mark Schweikert, at or about the time frame of the allegations in this lawsuit that he [Greg Hartmann] did not have the unilateral authority as the clerk to remove any information from the website that was filed with the Court but that information could only be removed by local rule, that Hartmann created a local privacy task force which researched best practices nationally, and that the task force, which included Judge Schweikert created a local rule to address remote public access to arguably sensitive private information, which rule was the first of its kind in Ohio and was described by representatives of this Court as a "model." In that factual context allegations that Hartmann personally was "reckless", "willful" and "wanton" are ludicrous. Although dehors the record in this case for purposes of a 12(B)(6) motion, those facts belie the assertion that Hartmann is sued here individually and should explain unequivocally why he was not sued in his individual capacity. Hartmann's position is that if Lambert is suing him individually for "reckless, willful and wanton" conduct she must do so in the context of facts known to her at the time of filing: namely, January 27, 2007, which she clearly did not.

3 Appellee has never plainly argued until now that Hartmann is being sued individually as an employee in this action. (T.d. 3 [Memorandum in Opposition to Memorandum in Support of Jurisdiction]); (T.d. 15 [Amended Brief of Plaintiff-Appellee]); Trial Doc. 23 [Plaintiff's Memorandum in Opposition to Motion to Dismiss]). In fact, Appellee, by and through counsel, at oral argument before the court of appeals indicated that the case was brought against

In fact Appellee's argument that Hartmann is sued individually although made a party in his official capacity breathes life into the argument that Appellant made in the Memorandum in Support of Jurisdiction to this Court. (T.d. 2)

To read R.C. 2744.02 other than as immunity for Hartmann in this case, would create a new class of defendants unintended by the law. Additionally, the interpretation by the court of appeals would prevent the automatic substitution of parties as provided in Ohio R. Civ. P. 25 (D).

Appellee's position is now evident: despite failing to allege any individual action of Hartmann directed at her which caused her injury, despite the fact that the statute of limitations has run on an individual action against Hartmann, and despite the substitution of Hartmann with the duly elected clerk of courts in Hamilton County, Patricia Clancy, Appellee argues that Hartmann is individually liable for actions in his official capacity as clerk of courts. A new class of defendants is created: elected officials, who do not have political subdivision immunity for acts in their official capacity as policy makers and therefore are automatically parties in their individual capacity where the suit is brought against them in their official capacity. This absurd result is not contemplated in a plain reading of R.C. 2744.02 and vitiates automatic substitutions under Ohio R. Civ. P. 25(D).⁴

1. A plain reading of the Complaint indicates that Hartmann was made a party to this suit in his official capacity.

In Defendant-Appellant, Greg Hartmann/Patricia Clancy's ("Appellant") merit brief the Complaint was fully analyzed. The only allegations in the Complaint concerning reckless, willful and

Hartmann in his official capacity. (T.d. 20 [Appellant's Notice of Additional Authority]).

⁴ See Appellee's Memorandum in Opposition to Jurisdiction in this Court at 1: "Mr. Hartmann's proposition of law that as an elected official of an Ohio county he is entitled to immunity under R.C. 2744.02 contradicts the plain language of the statute... The General Assembly expressly distinguished between suits brought against political subdivisions and those brought against elected officials." (T.d. 3).

wanton actions are contained in paragraphs 16 and 24. Paragraph 16 states in pertinent part “[d]espite the known, obvious and expressly warned of risk...the Clerk of Court’s Office recklessly, willfully and purposefully continued its practice of publishing personal information on the internet.” Paragraph 24 states in pertinent part, “[t]he risk of identity theft to which Ms. Lambert was exposed was a direct result of the knowing, reckless, willful and wanton policy, practice and custom of the Hamilton County Clerk of Courts who, with deliberate indifference to the known risk posed, indiscriminately published on the internet personal information...by means of its website www.courtclerk.org.”

The remaining allegations of the Complaint refer to acts of the prior clerk, James Cissel, emails directed to clerk of court employees, and specific conversations Appellee had with clerk of courts employees, other than Hartmann. There are no allegations that Hartmann was aware of Appellee personally or took any individual actions regarding her which resulted in her injury. Rather the allegations in the Complaint are directed to the policies of the office of the clerk: policies developed and implemented before Hartmann took office. The political subdivision of Hamilton County is the real party in interest in this case, by virtue of Appellee’s suing Hartmann in his official, capacity. In fact, by and through counsel, at oral argument in the court below, Appellee specifically stated that this action is directed to Hartmann in his official capacity.⁵

To punctuate the point, any action against Greg Hartmann, personally and individually, was time barred as of December 20, 2006 at the latest, as Appellee well knows. Appellee’s Section 1983 federal suit, alleging the same facts as those alleged in this case, was filed on December 20, 2004.⁶ In that complaint Hartmann was sued in his official capacity only. “Where a governmental employee is sued in his official capacity only in a Section 1983 action, the claim is to be treated as being against

⁵ Appellee’s Notice (*Gregory Hartmann*) of Additional Authority , C070600, June 5, 2008

⁶ See Appendix A-1, Verified Class Action Complaint with Jury Demand, Lambert v. Greg Hartmann,

the governmental entity of which the employee is an agent...The plaintiff who names a government employee in his official capacity is seeking recovery only from the governmental entity itself and is not attempting to establish personal liability of the employee.”⁷

Appellee’s cause of action is grounded in tort and therefore the two year statute of limitations codified in R.C. 2305.10 applies to her state tort claims. Appellee’s cause of action accrued prior to December 20, 2004 and therefore, the statute of limitations ran on any action against Hartmann individually and personally on December 20, 2006 at the latest. The Complaint in the instant case was filed on January 27, 2007 and therefore were it directed at Hartmann individually and personally, which it is not, it would be time barred.

Faced with political subdivision immunity at the trial court level, Appellee argued that immunity was not available to the office of the clerk of courts, because Hartmann was by definition an employee of Hamilton County and not a political subdivision unto himself. Accordingly, Hamilton County could not enjoy immunity under R.C. 2744.02. Rather, immunity of the clerk’s office had to be analyzed under R.C. 2744.03(A)(6) since allegations of recklessness, willfulness and wantonness on the part of the clerk’s office had been alleged. Lambert now in effect abandons that argument by asserting that she is suing Hartmann individually as an employee.⁸

However, the legal issue argued and briefed throughout this litigation in state court has been whether Hamilton County, the real party in interest, can enjoy immunity under R.C. 2744.02 when the action is instituted by suing the elected official who is the appointing authority for an entity of county government. Appellee’s position has been that Hartmann’s status as an employee by definition

Hamilton County Clerk of Courts, 1:04CV837

⁷ *Clark v. Dublin*, (Ohio App. 10th Dist. 2002), 2002 WL 465013, at 11 (citing 42 U.S.C.A. Section 1983).

⁸ Appellee then concedes that the office of the clerk of courts enjoys immunity under an analysis of R.C. 2744.02.

precludes immunity of the office of the clerk of courts using a R.C. 2744.02 analysis. Appellee cannot redirect the argument at this stage to Hartmann individually.

2. Appellee did not argue at the trial or appellate court level that she is suing Hartmann as an individual, only that as an elected official the clerk of courts cannot be immune pursuant to R.C. 2744.02 because he is an employee by definition and not a political subdivision.

In her memorandum in opposition to the Motion to Dismiss at the trial court level, Appellee argued that “Hartmann’s reliance upon R.C. 2744.02 is plainly misplaced, as that provision applies only to political subdivisions, not their employees.”⁹ Appellee argued that the immunity analysis had to begin with R.C. 2744.03(A)(6) since allegations of recklessness, willfulness and wantonness had been made. Therefore, even though the allegations centered on policies of the clerk’s office, immunity was subject to a R.C. 2744.03(A)(6) analysis.

At the oral argument on the motion before the trial court, Appellee’s counsel stated:

Outside of the fact of the complaint, judge, if I can clear up once and for all any different rationale between whether Greg Hartmann is sued as an employee or official capacity, there is none. 2744.01 defines political subdivision as Hamilton County, that’s it, the body itself.

If you read where – actually the definition of political subdivision, it does not say anything about elected officials either in official capacity or as employee. 2744.01(B) where it defines employee, specifically defines employee as including an elected official. So, there’s not 24.02 [sic R.C. 2744.02] immunity for employee (sic) or elected official.¹⁰

In her merit brief Appellee does not address whether an elected official sued in his official capacity is subject to immunity according to an analysis of R.C. 2744.03(A)(6). Instead she states:

Defendant contends that even if Mr. Hartmann was sued in his individually, (sic) he is entitled to political subdivision immunity under 2744.02 because pursuant to his role

9 T.d. 30

10 Appendix A-2, at 54.

of policymaker and planner he “was not acting in his personal capacity but rather in his official capacity as clerk of courts”.

This statement is inaccurate. Appellant’s position is that when an elected county official is made a party to a lawsuit in his official capacity, he stands as the political subdivision for purposes of R.C. 2744 et seq. In the instant case then Hartmann would stand for Hamilton County, the real party in interest. To the extent that Hartmann and his successor Ms. Clancy stand in the stead of Hamilton County, the county is entitled to immunity under R.C. 2744.02, where appropriate. The county is not precluded from having immunity under the terms of R.C. 2744.02 merely because by definition the elected official running the county agency is also a county employee. Conversely, elected officials because they are employees of the political subdivision are not immune in their individual, personal capacities pursuant to R.C. 2744.02 for injuries they personally cause outside the scope of their employment.

Appellee cites several cases for the proposition that this “Court has repeatedly emphasized that employees acting in their “official capacity—regardless of their role as policy makers or planners—will be subject to the standards of immunity set forth in R.C. 2744.03(A)(6).” This statement is inaccurate. Appellee cites *Fabrey v. McDonald Village Police Dept.*, in which this Court found that the plaintiffs failed to offer proof of wanton conduct to give rise to “personal liability” on the part of the police chief.¹¹ *Fabrey* actually supports Appellant’s position in this case as this Court held:

While we agree that individual employees may be held liable for their malicious, bad faith, wanton or reckless acts. R.C. 2744.03(A)(6) by its very terms applies only to individual employees and not to political subdivisions....Appellants do not allege that Chief Tyree gave the ignition device to Riddle (arguably such behavior could be considered willful and wanton conduct, given Riddle’s unstable condition at the time

¹¹ (1994), 70 Ohio St.3d 351, 356, 639 N.E.2d 31.

of incarceration).¹²

Appellee's reliance on *Greene County Agricultural Society v. Liming*¹³ for the proposition that the clerk of courts office is not entitled to immunity pursuant to R.C. 2744.02 is similarly misplaced. In *Liming*, this Court found that the Green County Agricultural Society was a political subdivision for purposes of R.C. 2744.02, just as the Court may find in this instant case that the office of the clerk of courts stands in the stead of Hamilton County, the real party in interest.¹⁴ In its reasoning this Court stated

In a situation such as the present case, when the political subdivision at issue is not one of the bodies specifically mentioned within R.C. 2744.01(F), the exceptions to immunity of R.C. 2744.02(B) should be construed in a way that leads to a finding of immunity for only the central core functions of the political subdivisions.¹⁵

Consequently, the *Liming* decision actually supports a finding by this Court that the Hamilton County Clerk of Courts Office may have immunity as proscribed in R.C. 2744.02. Further, in discussing the potential liability of the society's director in *Liming*, this Court noted "the question of Managan's personal liability, and how R.C. 2744.03 applies to that, requires a different analysis than we employ with regard to R.C. 2744.03's application to the Society."¹⁶ In *Liming* the question was the **personal** liability of the director who had conducted an investigation of plaintiff's activities in the purchase and showing of the hog, "Big Fat." In the instant case the question is not whether Hartmann has any personal liability, but rather whether the office of the clerk has immunity under R.C. 2744.02 for the performance of governmental functions, absent an exception to liability as set forth in R.C. 2744.02(B).

¹² *Id.*

¹³ (2000), 89 Oho St.3d 551, 733 N.E.2d 1141.

¹⁴ *Id.* at 560-61.

¹⁵ *Id.*

¹⁶ *Id.* at 561.

Appellee also cites *Cramer v. Auglaize Acres*¹⁷ and *Rankin v. Cuyahoga County Department of Children and Family Services*¹⁸ for the proposition that immunity is analyzed pursuant to R.C. 2744.03(A)(6) when an elected official is made party to a suit in his official, capacity, rather than his personal capacity. Neither case supports this proposition. In *Cramer*, R.C. 2744.02 was inapplicable because the Court found that R.C. 3721.10(A) and R.C. 3721.17(I)(1) specifically abrogated “governmental immunity” and granted a cause of action against the nursing home and county administrators. This Court held that R.C. “3721.17(I)(1) specifically grants a cause of action to residents of county nursing homes...against a political subdivision for violations of R.C. 3721.10 through 3721.17.”¹⁹ This Court however found that there was no cause of action against the individual nurse employees because there was no express statement that the employees will be individually liable in R.C. 3721.17(I)(1)²⁰. The Court makes a distinction between political subdivision liability and personal, individual liability.

Again in *Rankin*, this Court distinguished between the immunity of the political subdivision, represented by the Cuyahoga County Department of Children and Family Services, and the immunity of the individual employee who was assigned as the caseworker. In *Rankin*, the director of the department, as well as the caseworker were sued. This Court remanded the case on the question of the immunity of the director and caseworker stating “we affirm the decision of the court of appeals to remand this cause to the trial court for further proceedings regarding what involvement, if any, McCafferty [director] and Zazzara [caseworker] had in the supervised visit that occurred between

17 (2007), 113 Ohio St.3d 266, 865 N.E.2d 9.

18 (2008), 118 Ohio St.3d 392, 889 N.E.2d 521.

19 113 Ohio St.3d at 274.

20 Id.

D.M. and Martin.”²¹ The question on remand was the extent of the personal and individual involvement of the director and the caseworker in the supervised visit that resulted in the child’s death. In the instant case, the individual liability of Hartmann is not at issue. There are no allegations of any direct contact between Hartmann and Appellee or any personal knowledge on Hartmann’s part for Appellee’s circumstances. In this context, the question concerns the immunity of the political subdivision and not Hartmann’s personal and individual liability.

3. Appellant is not appealing to public policy but to a plain reading of the intent of R.C. 2744.02

Lastly, Appellee argues that Appellant of asking this Court to “override R.C. Chapter 2744, including R.C. 2744.02 and 2744.07.” In reality, it is Appellee who is asking the Court to ignore the plain meaning of Chapter 2744. The real party in interest in this case is Hamilton County. The office of the Hamilton County Clerk of Courts was sued. The office was sued by naming Greg Hartmann, the duly elected clerk of courts at the time was named as the defendant. When a county is subject to suit by a filing against a county agency which names the elected official in his official and capacity, the county is entitled to immunity under the terms of R.C. 2744.02 if no exception to immunity is alleged. Immunity under R.C. 2744.02 is not forfeited because the lawsuit makes the elected official a party in his official and capacity in order to name a party which is *sui juris*. Such a result does not comport with the legislative intent of Chapter 2744.

CONCLUSION

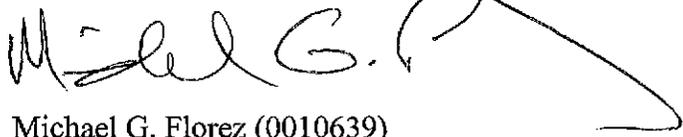
Appellee has not alleged any exceptions to immunity set forth in 2744.02(B)(1)-(5) so the immunity of Hamilton County and the Hamilton County Clerk of Courts is absolute. Hartmann’s status as an employee does not affect the application of the three tiered analysis of political

²¹ 118 Ohio St.3d at 526-27.

subdivision immunity required by this Court. There are no individual and personal actions of Hartmann alleged in the Complaint which rise to recklessness, willfulness and purposefulness as a matter of law. In fact the allegations of purposeful, reckless, wanton and willful actions alleged in the Complaint are directed specifically at the policies, practices and customs of the office of the clerk of courts. The decision of the First District Court of Appeals should be reversed and this case should be dismissed.

Respectfully,

Joseph T. Deters, 0012084P
Prosecuting Attorney

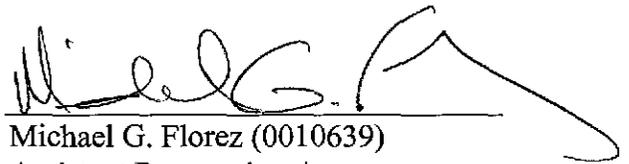
A handwritten signature in black ink, appearing to read "Michael G. Florez", with a long, sweeping underline that extends to the right.

Michael G. Florez (0010639)
Pamela J. Sears (0012552)
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: (513) 946-3082 (Sears)
Phone: (513) 946-3229 (Florez)

Attorneys for Defendant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing Merit Brief of Defendant-Appellant by United States mail, addressed to Marc Mezibov and Stacy Hinnners, Attorneys at Law 401 East Court Street, Suite 600, Cincinnati, Ohio 45202, counsel of record, this 18th day of June, 2009.

A handwritten signature in black ink, appearing to read "Michael G. Florez", written over a horizontal line.

Michael G. Florez (0010639)
Assistant Prosecuting Attorney

00314491

APPENDIX

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
JAMES J. WATSON
CLERK

04 DEC 20 AM 11:59

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CYNTHIA C. LAMBERT,
c/o MEZIBOV & JENKINS, LLP
1726 YOUNG STREET
CINCINNATI, OHIO 45202

Plaintiff,

vs.

GREG HARTMANN, in his official
capacity as CLERK OF COURTS
HAMILTON COUNTY COURTHOUSE
ROOM 375
1000 MAIN STREET
CINCINNATI, OHIO 45202

and

HAMILTON COUNTY BOARD
OF COUNTY COMMISSIONERS,
138 East Court St.
Room 306
Cincinnati, OH 45202
In their official capacities

Defendants.

CASE NO. 1:04 CV 837

JUDGE J. WATSON

VERIFIED CLASS ACTION COMPLAINT
WITH JURY DEMAND

I. PRELIMINARY STATEMENT

1. Plaintiff Cynthia Lambert brings this action on behalf of herself and all others similarly situated against Greg Hartmann in his official capacity as Clerk of Courts for Hamilton County.

(Hereinafter referred to as "Clerk of Courts" or "Clerk") and the Hamilton County Commissioners in their official capacities (collectively "Hamilton County" or the "County"). Ms. Lambert challenges policy and practice of systematically publishing personal and private information on its website, which offers unrestricted access to said information.

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331 and 1343(3)-(4) and 28 U.S.C. §1367. Federal jurisdiction is appropriate in this instance to secure protection and to redress deprivations of rights conferred by 42 U.S.C. §1983. This Court may assume supplemental jurisdiction over Plaintiff's pendant state law claims pursuant to 28 U.S.C. §1367 because these claims arise out of the same nucleus of operative facts of the federal claims.

3. The actions complained of herein occurred within the Southern District of Ohio; accordingly venue with this Court is appropriate.

III. PARTIES

4. Plaintiff Cynthia Lambert is a resident of Hamilton County and has been the victim of identity theft.

5. Defendant Greg Hartmann has served as the Clerk of Courts for Hamilton County since February 10, 2003. Part of Mr. Hartmann's official duties include the filing and preserving of all papers delivered to the Clerk's Office for that purpose. His Office maintains a web-site that has been in operation since approximately January 1999. Mr. Hartmann is sued in his official capacity for acts committed pursuant to Hamilton County policy.

6. Defendant County Commissioners Todd Portune, John Dowlin, and Guy Guckenberger are the duly elected and acting County Commissioners for Hamilton County, Ohio. Each

Commissioner is sued in his official capacity for acts committed pursuant to Hamilton County policy.

IV. STATEMENT OF FACTS

7. On September 23, 2003, Ms. Lambert received a speeding ticket in Anderson Township, Hamilton County, Ohio (Ex. 1). The officer issuing the ticket completed in full an Ohio Uniform Traffic Ticket. This form is used by various law enforcement officials throughout the State of Ohio and serves as the legal complaint for a number of traffic violations. According the Ohio Uniform traffic law, Officers are to fill these tickets out in full when issuing a citation.

8. Ms. Lambert's speeding ticket included a great deal of personal and private information, including Ms. Lambert's name, signature, home address, birth date, driver's license number and her social security number. The issuing officer gave a copy of the ticket to Ms. Lambert and caused a copy to be delivered to the Clerk's Office for filing.

9. The Clerk's of Courts Office is responsible for the preservation of hundreds of thousands of court-related documents, and publishes many of these documents on its website. One of the divisions of the Clerk's Office, the traffic division, processes over 50,000 traffic tickets each year. Upon information and belief, the Clerk's Office causes each traffic ticket received to be published on its website in an electronic form which produces an image of the ticket in its original, unaltered form. The website offers traffic offenders the ability to search for and to pay certain types of traffic tickets on-line. Users may search for a traffic ticket through the traffic ticket number, which is on the issued citation, or may undertake a more general name search in an attempt to retrieve an image of a scanned ticket. The website's "name search" feature requires a user to type in a complete last name and the first letter of a first name. The website then produces a list a list of docket numbers

associated with the last name and first initial entered in the search. Beside some of these docket numbers is a blue "doc" link, which allows users to view a document associated with a certain name by clicking on the link, including traffic tickets. The system is very "user-friendly." Within ten minutes of searching the Clerk of Court's website through a name search only, Plaintiff's counsel were able to retrieve, view and print three traffic citations. (See Exhibits 2-4). All tickets were in the form of, or were in a form based upon, Ohio's Uniform Traffic Ticket form, and therefore included the offender's name, signature, home address, birth date, driver's license number and social security number. (See Id.) Counsel has redacted the social security and driver's license numbers from these documents. In addition, counsel was able to quickly obtain an image of a dogwarden citation which also contained the cited parties' social security number and other personal identifying information (Exhibit 5).

10. Despite the known and obvious risk associated with publishing personal and private information including, but not limited to, an individual's social security number, the Clerk of Court's Office published Ms. Lambert's traffic ticket on its website. (Ex. 1). As of the date of the filing of this complaint, the ticket remains in its original, unaltered form on the Clerk's website and is available to anyone with access to the internet.

11. Nearly a year after Ms. Lambert received her speeding ticket, she received a call from a Sam's Club loss prevention officer. The officer informed Ms. Lambert that an individual purporting to be Cynthia Lambert had made a very large electronics purchase in excess of \$8,000.00, immediately after raising Ms. Lambert's Sam's Club account credit limit. Based on the circumstances surrounding this sale, Sam's Club employees became suspicious, and asked for identification before completing the sale. The individual posing as Ms. Lambert was able to produce

a driver's license displaying Ms. Lambert's full name, home address, birth date, driver's license number and social security number. Consequently, the sale was completed and charged to Plaintiff's account. The same day that Ms. Lambert spoke with Sam's Club, she filed a report with the Hamilton County Sheriff's department.

12. The next day, Ms. Lambert received a call from a Home Depot store, inquiring as to a credit card account opened in her name. Ms. Lambert did not open this account. Apparently, the individual opening the account was able to produce a seemingly authentic State of Ohio driver's license, which included Ms. Lambert's name, address, birth date, driver's license number and social security number. Approximately \$12,000.00 in charges were made to this account.

13. Through her conversations with Sam's Club and Home Depot, it was suggested to Ms. Lambert that the woman posing as her might have gained access to Plaintiff's personal information through the posting of Ms. Lambert's traffic ticket on the Clerk of Court's website. Ms. Lambert also learned that the driver's license number used on the identification produced by the individual purporting to be her was wrong by one digit. Ms. Lambert subsequently conducted a name search on the Clerk of Courts website and was able to retrieve her traffic ticket in its original form. The traffic ticket contained her name and signature, her address, birth date, driver's license number and social security number. Her driver's license number, however, was off by one digit and exactly matched the number used by the woman posing as Plaintiff.

14. Ms. Lambert immediately contacted the Clerk of Court's office. She spoke with Mr. Jerry Poland, the Chief Deputy of the Municipal Traffic Division, and explained her predicament. Mr. Poland was dismissive of Ms. Lambert's concerns. He told her that tickets were published on the website as a convenience to the parties involved, that removing these items from the website

would require vast amounts of manpower, and – even though Mr. Poland was told of the matching incorrect driver’s license numbers – that Ms. Lambert’s identity could have been stolen by any number of means and not necessarily as a result of information posted on the Clerk’s website.

15. Ms. Lambert took a number of other steps in an attempt to protect herself from further fraudulent activity. She subscribed to a service offered by the credit reporting agency, Equifax, which allowed her to view her credit rating on-line. She checked it on a daily basis. Ms. Lambert discovered that her credit-limit had been raised on a number of credit cards she already had, and that there was other, unauthorized activity on some of these cards. Before Ms. Lambert was able to cause a fraud alert to be issued on her social security number, nearly \$20,000 worth of unauthorized charges appeared on various accounts in Plaintiff’s name. As a result, Ms. Lambert’s credit rating has fallen. She has invested substantial amounts of time and energy to ensure that she will not be held personally liable for any unauthorized charges.

16. A short time ago, Ms. Lambert was contacted by Blue Ash Police Detective Jay Graves. Detective Graves had an individual in custody who allegedly confessed to being a part of a ring of identity thieves. According to Detective Graves, the information these thieves used in order to pose as others, and thereby gain access to personal financial information, was obtained from traffic tickets published on the Clerk of Court’s website. Ms. Graves has spoken with law enforcement officials who believe that they have arrested the woman who stole Ms. Lambert’s identity, Ms. Sutherland, and that she was a part of this ring. Ms. Sutherland has been indicted and is awaiting trial.

17. Ms. Lambert has invested a great deal of time and has suffered emotional distress and anxiety arising from her attempts to clear her name and her credit rating, and to stop the unauthorized charges to her accounts. Upon information and belief, the social security fraud alert on Ms.

Lambert's social security number is effective for five years, only. Even though Ms. Lambert has managed to currently bring a halt to the unauthorized use of her identity, she has no way of knowing who else might have access to her personal and private information that was posted on the Clerk of Court's website. Without a change in her social security number, Ms. Lambert could face another round of fraudulent activity and unauthorized charges in another five years.

18. As a direct and proximate result of the publication of her SSN and other personally identifying information, as aforesaid, Ms. Lambert has suffered economic damages, damages to her personal credit rating, and damage to her reputation.

19. The damages suffered by Ms. Lambert as previously described are the direct result of the official policies, practices and customs of the Hamilton County Clerk who, under color of state law, indiscriminately publishes personally identifying information including citizen's social security numbers by means of its government website www.courtclerk.org to which members of the public have unregulated and unlimited access.

V. CLASS ALLEGATIONS

20. Plaintiff maintains this action on behalf of herself and all individuals who have had their social security numbers published on the Clerk of Courts website.

21. Upon information and belief, hundreds of thousands persons have received traffic tickets since 1999 in Hamilton County, have had their social security numbers published by the Clerk of Courts and therefore compromise the putative class.

22. The members of the putative class are so numerous that joinder of individual claims is impracticable. Moreover, there are significant questions of fact and issues of law common to the members of the putative class. These issues include whether the publication of private information

over a public website constitutes a violation of constitutional rights to privacy and personal security; whether there is a legitimate governmental interest in the publication of individuals' social security number; and, whether and to what extent the publication of individuals' social security numbers causes compensable damages.

23. Plaintiff's claim is typical of the claims of the putative class. Plaintiff and all members of the putative class have been damaged in that private information has been published on the Clerk of Court's website.

24. The proposed class representative will fairly and adequately represent the putative class because she has the class members' interest in mind, her individual claims are co-extensive with and identical to those of the class, and because she is represented by qualified counsel experienced in class action litigation.

25. A class action in this instance is superior to other available methods for the fair and efficient adjudication of these claims since individual joinder of the claims of all members of the putative class is impracticable. Most members of the class are without the financial resources necessary to pursue this matter. Even if some members of the class could afford to litigate their claims separately, such a result would be unduly burdensome to the courts in which the individualized cases would proceed. Individual litigation increases the time and expense of resolving a common dispute concerning Clerk of Court's actions toward an entire group of individuals. Class action procedures allow for far fewer management difficulties in matters of this type and provide the unique benefits of unitary adjudication, economy of scale and comprehensive supervision over the entire controversy by a single court.

26. The putative class may be certified pursuant to Rule 23 (b)(1) of the Federal Rules of Civil Procedure because inconsistent or varying adjudications with respect to individual class members would establish incompatible standards of conduct for Defendants to follow.

27. The putative class may also be certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure because Defendants have acted on grounds generally applicable to the putative class thereby making final injunctive relief and corresponding declaratory relief appropriate with respect to the claims and primary relief sought by the class.

28. The putative class may further be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure because questions of law and fact common to class members will predominate over questions affecting individual members and a class action is superior to other methods for fairly and efficiently adjudicating the controversy and causes of action described in the Complaint.

29. Members of the putative class can be easily identified based on records kept by Defendants and damages and harm stemming from the indiscriminate publication of individuals' social security numbers is manifest and common to all members of the class.

VI. STATEMENT OF CLAIMS

COUNT I

30. Plaintiff repeats and reaffirms the assertions of fact contained in paragraphs 1 through 29 herein above.

31. The foregoing acts of Defendants violate Plaintiff's rights to privacy under the United States Constitution.

COUNT II

32. Plaintiff repeats and reaffirms the assertions of fact contained in paragraphs 1 through 31 herein above.

33. The foregoing acts of Defendants violate Plaintiff's right to personal security under the 14th Amendment to the United States Constitution

COUNT III

34. Plaintiff repeats and reaffirms the assertions of fact contained in paragraphs 1 through 33 herein above.

35. The foregoing acts of Defendants violate Plaintiff's right to procedural and substantive due process under the 14th Amendment to the United States Constitution.

COUNT IV

36. Plaintiff repeats and reaffirms the assertions of fact contained in paragraphs 1 through 35 herein above.

37. The foregoing acts of Defendant violate Plaintiff's legitimate expectations of privacy derived from her right to be free from unreasonable search and seizure under the 4th Amendment to the United States Constitution.

COUNT V

38. Plaintiff repeats and reaffirms the assertions of fact contained in paragraphs 1 through 37 herein above.

39. The foregoing acts of Defendant violate Plaintiff's right to privacy under the common law of Ohio.

COUNT VI

40. Plaintiff repeats and reaffirms the assertions of fact contained in paragraphs 1 through 39 herein above.

41. The foregoing acts of Defendant constitute the tort of publication of private facts in violation of the common law of the State of Ohio.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cynthia Lambert on behalf of herself and all others similarly situated hereby demands judgment against Defendants Greg Hartmann and Hamilton County Commissioners as follows:

1. For a declaration that Defendants' indiscriminate publication of personally identifiable information and social security numbers by means of its government website constitutes a violation of the United States Constitution and the common law of the state of Ohio;
2. For preliminary and injunctive relief enjoining, prohibiting and preventing Defendants from further indiscriminately publishing personally identifiable information and social security numbers of citizens by means of its official website www.courtclerk.org or by any other means.
3. For an award of compensatory damages in favor of Plaintiffs in an amount commensurate with their economic and non-economic injuries stemming from the indiscriminate publication of personal identifiable information and social security numbers pursuant by means of Defendants' official website
4. For an award of reasonable attorney fees and costs incurred by Plaintiff and the members of the putative class in prosecuting this matter.

5. For an award of such other relief in law and equity to which Plaintiffs and the members of the putative class may be entitled under the premises.

Respectfully submitted,

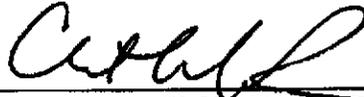


MARC D. MEZIBOV (Ohio Bar No. 0019316)
CHRISTIAN A. JENKINS (Ohio Bar No. 0070674)
ANITA BERDING (Ohio Bar No. 0066229)
MEZIBOV & JENKINS, LLP
1726 Young Street
Cincinnati, Ohio 45202
Telephone: (513) 723-1600
Telecopier: (513) 723-1620

Trial Attorneys for Plaintiff, Cynthia C. Lambert

JURY DEMAND

Plaintiffs hereby demand that all issues of fact in the foregoing class action complaint be tried
by a jury.



MARC D. MEZIBOV (Ohio Bar No. 0019316)
CHRISTIAN A. JENKINS (Ohio Bar No. 0070674)
ANITA P. BERDING (Ohio Bar No. 0066229)
1726 Young Street
Cincinnati, Ohio 45202
Telephone: (513) 723-1600
Telecopier: (513) 723-1620
Trial Attorney for Plaintiff Cynthia C. Lambert

VERIFICATION

I, Cynthia Lambert, Plaintiff hereby verify and affirm under penalty of perjury that the averments and statements of fact in the foregoing Complaint are true and accurate to the best of my knowledge and belief.

Cynthia C Lambert
CYNTHIA LAMBERT, Plaintiff

MUNICIPAL COURT HAMILTON COUNTY, OHIO

STATE OF OHIO ANDERSON CO

CASE NO. TICKET NO. 00-8601833

NAME CINDIA C LAMBERT

STREET

CITY, STATE ZIP

LICENSE ISSUED MONTH YEAR EXPIRES BIRTHDATE STATE

SSN O.B. M.O.

RACE SEX HEIGHT WEIGHT HAIR EYES FINANCIAL RESPONSIBILITY PROOF SHOWN

LICENSE NO. Yes No

Lic. Class DOT # Does Not Apply

TO DEFENDANT: COMPLAINT

ON 09/25/03 AT 1817 H. YOU DRIVING/PARKED/WALKED/A

VEHICLE: YR. MAKE MODEL BODY TYPE COLOR LIC. STATE

UPON A PUBLIC HIGHWAY, NAMELY SR. 125

AT/BETWEEN 2870 (M.P.)

IN THE TWP. OF ANDERSON IN HAMILTON

COUNTY (NO. 31) STATE OF OHIO AND COMMITTED THE FOLLOWING OFFENSE(S).

Form with checkboxes for offenses: SPEED, OMVI, DRIVER LICENSE, SAFETY BELT, OTHER OFFENSE.

Form with checkboxes for conditions: DRIVER LICENSE HELD, VEHICLE SEIZED, PAVEMENT, VISIBILITY, WEATHER, TRAFFIC, AREA, CRASH.

ACCOMPANYING CRIMINAL CHARGE Yes No TOTAL # OFFENSES

TO DEFENDANT: SUMMONS PERSONAL APPEARANCE REQUIRED

You are summoned and ordered to appear at EAST AGEN

10666 RD at 7:00 PM

10/6/03 If you fail to appear at this time and place you may be arrested

This summons served personally on the defendant on 09/25/03

The issuing officer certifies under the penalties of perjury and

testification that he/she has read the above and that it is true.

M. P. ROSS

Court Code Unit Post Dist

NOTE: ADDRESS OF DEFENDENT FROM LICENSE

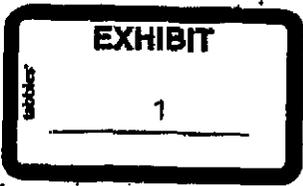
PRESENT ADDRESS

SIGNATURE

CO. RES

PHONE 615 474-4472

COURT RECORD



City of Cincinnati TICKET NO. 75-3454782

NAME ROBERT JENKINS

STREET [REDACTED]

CITY, STATE, ZIP [REDACTED]

LICENSE NO. [REDACTED]

LICENSE ISSUED [REDACTED]

SEX [REDACTED] D.O.B. [REDACTED]

SEC. [REDACTED] CONTROL # [REDACTED]

LICENSE CLASS: [REDACTED]

DOT # [REDACTED] FINANCIAL RESPONSIBILITY PROOF SHOWN YES NO

ON 8-13-89 TO 8-13-89 AT 150 COMPLAINT

CLASS 1 COMA CYCLE OVER 2000 BUS HAZ MAT DRIVER OTHER

VEH. RED MAKE FORD MODEL F150 BODYTYPE P4

COLOR RED LIC. EXP. 7/05 STATE OH

UPON A PUBLIC HIGHWAY, NAMELY 3525 LARKWOOD AVE

AT / BETWEEN [REDACTED] 1007

IN THE CITY OF CINCINNATI, COUNTY OF HAMILTON (if 51), STATE OF OHIO.

COMMITTED THE FOLLOWING OFFENSE

3068 MPH in MPH zone

SIGNATURE

Present Address

Place Of Employment

Home Phone

SELF

513-752-6557

75-3454782-1

COURT DATE
MONTH DAY YEAR
8 23 89
8:00 PM 11:00 AM
11:30 AM 9:00 AM

HAMILTON COUNTY MUNICIPAL COURT
ROOM 121
1000 Sycamore St.
Cincinnati, Ohio

HAMILTON COUNTY JUVENILE COURT
800 Broadway Ave.
Cincinnati, Ohio

TO DEFENDANT, SUMMONS IF COURT APPEARANCE IS REQUIRED.
You Are Summoned And Ordered To Appear At

REV. 9/83 CITY OF CINCINNATI, PRINTING SERVICES 513-345-0222

EXHIBIT 3

Huron Co. Court HURON COUNTY, OHIO
STATE OF OHIO Green
 City Village Township **44 46842 6**

TICKET NO. _____
CASE NO. _____
V. GARY BORDING
NAME [REDACTED]
STREET _____
CITY, STATE _____
LICENSE ISSUED MO. _____ YR. _____ EXPIRES BIRTHDATE 20 _____ STATE _____

SGN _____
RACE _____ SEX _____ HEIGHT _____ WEIGHT _____ HAIR _____ EYES _____
FINANCIAL RESPONSIBILITY PROOF SHOWN Yes No
LICENSE NO. _____
Lic. Class _____ DOT # _____ Does Not Apply

TO DEFENDANT: COMPLAINT

ON 12-4 2000 AT 10:42 M. YOU/OPERATED/PARKED/WALKED/A
 Pass Comm. Cycle Over 26001 Bys Haz. Mat.
VEH. [REDACTED]
COLOR [REDACTED]
UPON A PUBLIC HIGHWAY, NAMED LEON
AT/BETWEEN 5305 (M.P. _____)
IN THE TOWNSHIP OF Green IN Huron COUNTY (NO. 31), STATE OF OHIO AND COMMITTED THE FOLLOWING OFFENSE(S)

<input type="checkbox"/> SPEED: _____ MPH in _____ MPH zone	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Over limits <input type="checkbox"/> Unsafe for cond. <input type="checkbox"/> ACDA	
<input type="checkbox"/> Flash <input type="checkbox"/> Air <input type="checkbox"/> VASCAR <input type="checkbox"/> Pace <input type="checkbox"/> Laser <input type="checkbox"/> Stationary <input type="checkbox"/> Moving	
<input type="checkbox"/> DMV: <input type="checkbox"/> Under the influence of alcohol/drug of abuse	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Prohibited blood alcohol concentration _____ SAC	
<input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Urine <input type="checkbox"/> Refused	
<input type="checkbox"/> DRIVER LICENSE: <input type="checkbox"/> None <input type="checkbox"/> Revoked <input type="checkbox"/> Suspended	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Not on person Expired: <input type="checkbox"/> 3 mos. or less <input type="checkbox"/> Over 3 mos.	
Suspension Type _____	
<input type="checkbox"/> SAFETY BELT - Failure to wear	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Child Restraint	
<input checked="" type="checkbox"/> OTHER OFFENSE <u>Partial No Parked Edge Lane</u>	<input checked="" type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P. <u>4571.66</u>
OTHER OFFENSE _____	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.

DRIVER LICENSE HELD VEHICLE SEIZED ARREST CODE _____

PAVEMENT: Dry Wet Snow Ice 4 of Lanes _____ Const. Zone _____

VISIBILITY: Clear Cloudy Dusk Night

WEATHER: Rain Snow Fog No Adverse

TRAFFIC: Heavy Moderate Light None

AREA: Business Rural Residential Industry School

CRASH: Yes No Almost Caused Injury Non-injury Fatal
 Crash Report Number _____

REMARKS Req owner wanted on Capital - 399909

ACCOMPANYING CRIMINAL CHARGE Yes No TOTAL # OFFENSES _____

TO DEFENDANT: SUMMONS PERSONAL APPEARANCE REQUIRED

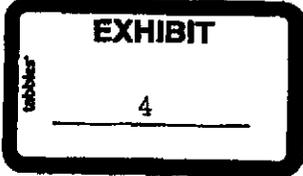
You are summoned and ordered to appear at Huron Co. Court Court
HARRISON & Lowell at 7p M.
12-21 2000 If you fail to appear at this time and place you may be arrested or your license may be cancelled.

This summons served personally on the defendant on 12-14 2000
The issuing charging law enforcement officer states under the penalties of perjury and falsification that he/she has read the above complaint and that it is true.

Daniel [Signature]
Issuing Charging Law Enforcement Officer
NOTE: ISSUING OFFICER BE SURE TO VERIFY ADDRESS. IF DIFFERENT FROM LICENSE ADDRESS WRITE PRESENT ADDRESS IN SPACE PROVIDED. OSHP HP7
COURT RECORD (88305)

PRESIDENT ADDRESS
SIGNATURE
ADL-488 CO. RES.

PHONE



OFFICE OF THE DOG WARDEN
STATE OF OHIO, HAMILTON COUNTY
IN THE HAMILTON COUNTY
MUNICIPAL COURT

COOB 2485
TICKET NUMBER 87- 313860
City of Hamilton
Withheld CR

① 2 3 CASE NO.

IDENTIFICATION NUMBER

NAME LARRY L. BERDING

STREET [REDACTED]

CITY [REDACTED] PHONE [REDACTED]

EMPLOYMENT [REDACTED]

MARR	SIGL	SEX	HGT	WGT	HAIR	EYES	DOB
[REDACTED]							

THE UNDERSIGNED, BEING DULY SWORN, UPON HIS OATH, DEPOSES AND SAYS THAT THE PERSON WHOSE NAME IS INSCRIBED ABOVE, BEING THE OWNER OR HARBORER OF A DOG,

BREED Shep-x SEX F COLOR BLACK

ON A CERTAIN STREET, TO WIT: 5650 Cleve WARSAW

AT 6:12 A.M. (P.M.)

ON OR ABOUT THE 3rd DAY OF JAN 00 AT AND IN HAMILTON COUNTY, STATE OF OHIO, DID UNLAWFULLY:

FAILURE TO properly Contain
DOG, TO premises of OWNER

in violation of Sect. # 955.22 Ohio Revised Code

Sworn to and subscribed before me
[Signature] this 5 Day of 1 99

SCOTT R. PURYEAR
Notary Public, State of Ohio
Notary's Supplemental Commission

IN OFFICE CITATION

OFFICER (PRINT) OFF. T. Barnett

DATE OF ISSUE OF TAG 1-4-00

DOG IMPOUNDED YES NO

ENTRANCE CARD NO. 471-134584

You are directed to appear in: **Court Date**

Criminal Court on Jan-19-00

PERSONAL APPEARANCE REQUIRED: If the officer has checked this block you must appear in court at the time and date shown. A payout will not be accepted.

NOTICE TO VIOLATOR: READ BOTH SIDES OF THIS SUMMONS. UNLESS YOU PAY THE FINE IN THE INDICATED TIME, BRING THIS TO COURT WITH YOU. THIS IS A COPY OF THE CHARGE WHICH WILL BE FILED IN COURT BY THE OFFICER WHOSE SIGNATURE APPEARS HEREON.

I acknowledge that I have personally received a copy of this completed form on the date of issuance. I agree to either payout if permitted or appear in court on the date indicated on this summons.

[Signature] COMPLAINT

EXHIBIT
5

CIVIL COVER SHEET

B. 837
Watson
Hogan

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Cynthia Lambert

(b) County of Residence of First Listed Plaintiff Hamilton County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mezibov & Jenkins, LLP
1726 Young Street
Cincinnati, Ohio 45208
(513) 723-1600

DEFENDANTS

Hamilton County Clerk of Courts, Greg Hartman, in his official capacity, and the Hamilton County Commissioners in their official capacities

County of Residence of First Listed Defendant Hamilton
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Annuist <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This is an action pursuant to 42 U.S.C. sec. 1983 for violation of personal security and privacy stemming from publication of citizens' social security numbers by means of a government web site.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/20/2004 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Mon Dec 20 11:53:44 2004

UNITED STATES DISTRICT COURT

CINCINNATI, OH

Receipt No. 100 425093
Cashier mcl

Check Number: 1298

DO Code Div No
4661 1

Sub Acct	Type	Tender	Amount
1:510000	N	2	90.00
2:086900	N	2	60.00

Total Amount \$ 150.00

MEZIBOV & JENKINS

FILING FEE 1:04CV837

Mon Dec 20 11:53:44 2004

Check No. 1298
Amount\$ 150.00
Pay any Federal Reserve Bank or
General Depository for credit to
United States Treasury Symbol 4661

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

- - -

CYNTHIA LAMBERT,)
)
 PLAINTIFF,)
)
 vs.) CASE NO. A-0700787
)
 GREGORY HARTMANN,)
 Hamilton County, Ohio,)
 Clerk of Courts,)
 DEFENDANT.)

- - -

TRANSCRIPT OF PROCEEDINGS

- - -

APPEARANCES:

STACY A. HINNERS, ESQ.
CHRISTIAN A. JENKINS, ESQ.
MARC D. MEZIBOV, ESQ.

On behalf of the Plaintiff.

MICHAEL GERARD FLOREZ, ESQ.
PAMELA A. SEARS, ESQ.

On behalf of the Defendants.

BE IT REMEMBERED that upon the
hearing of this cause, on July 11, 2007, before
the Honorable Robert P. Ruehlman, a said judge
of the said court, the following proceedings
were had.

EDITED FOR EXPEDITED PURPOSES ONLY

1 MORNING SESSION, July 11, 2007

2 (On-the-record in-chambers
3 conference held.)

4 THE BAILIFF: John Rutter is on the
5 line. We're lining everybody up.

6 THE COURT: Okay. So, we have a
7 motion to dismiss.

8 MS. SEARS: Yes, sir.

9 THE COURT: Do we also have problem
10 with an extension to identify expert
11 witnesses? We have to deal with that
12 today.

13 MS. SEARS: Last time, Judge, you
14 gave us guidance on that, and then we
15 have been speaking. I think we can --
16 we're pretty accommodating with each
17 other. We don't anticipate we're going
18 to have much of a problem.

19 MS. HINNERS: We were supposed to
20 identify experts, Your Honor, last
21 Friday. So, we just ask for extra time.

22 MS. SEARS: I didn't realize you
23 did. We have no problem with that. So,
24 I mean, I didn't realize you did that.
25 We don't have an issue with that, Judge.

1 THE COURT: Okay. So, it's your
2 motion to dismiss. This is Lambert
3 versus Greg Hartmann, Clerk of Courts.
4 B-0700787.

5 Mr. Rutter, can you hear me okay?

6 MR. RUTTER: Yes, I can Your Honor.

7 THE COURT: All right. Do you want
8 to argue the motion, to.

9 MR. FLOREZ: Yes, Judge, Michael
10 Florez on behalf of Greg Hartmann, Clerk
11 of Courts. Briefly, the facts in this
12 case were Miss Lambert received a
13 speeding ticket -- or traffic ticket, I'm
14 sorry, and didn't pay it within the
15 period of time. It was then posted on
16 the Clerk's website as the complaint for,
17 the charging document for the complaint.
18 Some time later Tracy Southerland used
19 the information that she received off of
20 that posted complaint, and was later
21 arrested for using Miss Lambert's
22 information.

23 THE COURT: Identity fraud?

24 MR. FLOREZ: Right. This case then
25 was filed in -- the same case was filed

1 in Federal Court in -- I'm sorry,
2 September of 2005 before Judge Watson,
3 U.S. District Court for the Southern
4 District of Ohio. Judge Watson dismissed
5 this case in December of 2006 as to all
6 Federal claims.

7 As far as the constitutional
8 violation, which Ms. Lambert alleged for
9 disclosure of her Social Security number
10 on Internet, he dismissed without
11 prejudice the State Court claims and left
12 it for this Court to tie up those ends.

13 This case now is before you on
14 several State Court claims. And our
15 position is that the Clerk of Courts --
16 and the reason we filed this motion to
17 dismiss, is immune from any of the State
18 Court claims. And there are basically
19 three arguments on immunity that, as a
20 matter of law, Greg Hartmann, as Clerk of
21 Courts cannot be subject to suit. Not
22 just liability, but subject to suit.
23 I'll go through the analysis for each of
24 them --

25 First is under 2744.02. That's the

1 general statement immunity statute. And
2 02 deals with political subdivisions and
3 includes Greg Hartmann as Clerk of Courts
4 in his official capacity. The only
5 defendant in this case is Greg Hartmann
6 in his official capacity as elected Clerk
7 of Courts. There are no other named
8 defendants.

9 But under 2744.02(A)(1), he is
10 immune from any State Court actions,
11 unless there's an exception under Section
12 B. So A gives -- what A gives, B could
13 take away. A says he's immune from all
14 damages in civil action for injury,
15 death, or loss of personal property in
16 connection with a governmental
17 proprietary function. B has five
18 exceptions, none of which apply here.

19 So under Cater verses City of
20 Cleveland, our analysis is finished. The
21 case is dismissed. There are -- there is
22 no State court claim. Even if there's a
23 separate cause of action against Greg
24 Hartmann as employee, I think Ms. Lambert
25 goes to great length to try to pull him

1 out as the employee he enjoys immunity
2 under separate provisions of the state
3 statute.

4 And I'll go through that analysis,
5 too.

6 Under 2744.03 our Court finds
7 immunity under 2744.03(A)(1). If the
8 individual is engaged in the performance
9 of judicial or quasi-judicial function.
10 In this case, the clerk serves at the
11 leisure of the Common Pleas Court.
12 Basically his job is to make these
13 records available pursuant to court
14 order.

15 And his duties are established
16 under Revised Code 2303.26 and 2303.38,
17 and they are simply to make the documents
18 which are filed in the Court available as
19 part and gathered and available for
20 inspection.

21 So under 2744.03(A)(1), he is
22 immune for actions in a quasi-judicial
23 capacity. There are two cases on this
24 point. One is Baker versus Cuyahoga
25 County Court of Common Pleas. This is a

1 1989 case. The cite is 572 N.E.2d 155.

2 THE COURT: What was that case
3 about?

4 MR. FLOREZ: This is a case where a
5 judgment creditor brought an action
6 because of problems with certificates of
7 judgment, said they weren't filed
8 properly. And in that case, the Clerk of
9 Courts and Deputy Clerk of Courts are
10 protected by judicial immunity from
11 common law claims of intentional or
12 negligent issuance of a false certificate
13 of judgment.

14 In that case, the Court extended
15 immunity saying this immunity extended to
16 Clerk of Courts of a Common Pleas for
17 actions taken in performance of Court's
18 function, citing Kelley versus White,
19 which is another -- which is Cuyahoga
20 County Clerk of Courts. And in that case
21 they were found immune from a civil suit
22 charging wrongful execution of a capias.
23 So, in his functions on behalf of the
24 Court, the clerk is immune to sue for a
25 State Court cause of action. That's the

1 second reason.

2 Even if we get through that, so as
3 a matter of law he's, one, immune under
4 2744.02. He's immune quasi-judicial
5 function, even if we get to the issue of
6 employee, which we don't believe is the
7 case, there's no individual suit here.
8 But even if we get to that, there's a
9 couple analysis here that ends the
10 plaintiff's case.

11 First, the Sudnik case versus
12 Crimi. In that case, which is cited in
13 our brief, the analysis of that court
14 says: I'll give you the cite on that
15 which is 117 Ohio App.3d 394, S-U-D-N-I-K
16 versus C-R-I-M-I.

17 THE COURT: Thanks.

18 MR. FLOREZ: In that case there was
19 an allegation that there was wrongful,
20 malicious behavior on the part of a
21 building inspector. And the Court in
22 that case said: That doesn't matter, the
23 analysis goes, first go to 2744.02. If
24 it's a political subdivision, or employee
25 of political subdivision, the only

1 exceptions are then in B. And since none
2 of the exceptions apply, you never make
3 it to 2744.03, that's the subject of
4 Crimi.

5 If this Court decides to go off on
6 a different tangent then and decides that
7 there's a potential here for individual
8 liability against the clerk as an
9 employee for malicious, willful, and
10 wanton acts, you must find as a matter of
11 law that he acted intentionally and
12 maliciously. And he's the climate that
13 the clerk is at the time of the filing of
14 this case.

15 Plaintiffs make a great deal out of
16 the case of Akron State ex. rel Beacon
17 Journal. In that case the Supreme Court
18 of Ohio said social security numbers
19 can't be disclosed. That was in 1994.

20 1996 we have a second case that
21 comes out of the Supreme Court. It's
22 State ex. rel Cincinnati Enquirer versus
23 Hamilton County. And in that case the
24 Supreme Court said, social security
25 numbers disclosed in 911 tapes are not,

1 they are part of public record and
2 therefore they cannot be removed from the
3 case.

4 THE COURT: Right.

5 MR. FLOREZ: The Wood County -- I'm
6 sorry Wood County Recorder said: I have
7 a problem, how do we reconcile these two
8 things? So, they asked for an opinion
9 .and then in '96, now the Ohio Attorney
10 General took that decision of Beacon
11 Journal and says that it's not an
12 obligation upon the county recorder to
13 remove or obliterate Social Security
14 numbers before he files mortgages and
15 those types of things on the recorder's
16 documents.

17 So, with that background you then
18 must find as a matter of law that the
19 clerk acted maliciously, given the fact
20 that you have these cases that have been
21 decided and interpreted by the Attorney
22 General of the State of Ohio. That his
23 action not to keep these documents off of
24 the Internet was a malicious, willful,
25 wanton act, and I don't believe that's

1 the case.

2 So you must find as a matter of law
3 he's not subject to 2744.02 immunity
4 under the first analysis. Or you must
5 find as a matter of law he's not entitled
6 to 2744.03 quasi-judicial immunity. Or
7 you must find as a matter of law he acted
8 maliciously, given the environment at the
9 time of the attorney general telling him,
10 no, you have no duty to redact.

11 Couple other small points, then
12 I'll close and allow -- if I could have a
13 little time for rebuttal here?

14 THE COURT: Sure.

15 MR. FLOREZ: This case is pending
16 before the U.S. Sixth Circuit Court of
17 Appeals, this exact case. And the
18 plaintiff's claim now that is not -- they
19 have abandoned their State Court claims
20 and it's only Federal.

21 THE COURT: What do you mean "this
22 case?"

23 MR. FLOREZ: This case was decided
24 by Judge Watson, was dismissed, the same
25 case.

1 THE COURT: Okay.

2 MR. FLOREZ: They appealed that
3 decision of Judge Watson.

4 THE COURT: So, that's not in the
5 Sixth --

6 MR. FLOREZ: It's now in front of
7 the Sixth Circuit Court of Appeals.
8 Their position, they have abandoned all
9 their State Court claims -- well, they
10 have abandoned the State Court claims
11 except to the extent they say, well, we
12 get a relation back -- and now I'm
13 talking about Revised Code Section 1347.
14 We get relation back -- on the 1347 claim
15 for wrongful disclosure.

16 And there are two reasons why that
17 claim cannot hold. The first reason is
18 they never made that allegation in the
19 Federal Court. It was never part of the
20 Federal record. They moved to do it out
21 of time, but it was never done.

22 Second, you can't waive your State
23 Court claims in this Federal Court case
24 and now say, well, we get a relation back
25 of our State Court claim, so we can file

1 it now in State Court; you either have
2 them or you don't. If you hang on to the
3 State Court claim, then this case has to
4 be dismissed under lis pendens. If you
5 let them go 1347, the statute of
6 limitations run.

7 THE COURT: That's a concept I
8 haven't had.

9 MR. FLOREZ: It's an old law school
10 concept. At any rate --

11 THE COURT: Than that concept is --

12 MR. FLOREZ: Relates back to
13 Federal Rule 15, I believe C. That if
14 you file a cause of action and it's
15 dismissed -- I'm sorry, if you file a
16 cause of action in Federal Court and then
17 you amend your pleadings, the amendment
18 relates back to the date of the original
19 filing.

20 Okay, two things. The case, the
21 amended pleading never was permitted, so
22 there was no relation back. And even if
23 it was, they have abandoned that in
24 filing their State Court action. So they
25 can either have their State Court action,

1 or they are precluded by lis pendens.

2 THE COURT: You got that in law
3 school?

4 THE CLERK: I didn't learn it in
5 law school. I can look it up really
6 quick.

7 MR. FLOREZ: So what we're left
8 with then is on the pleadings, Greg
9 Hartmann, as Clerk of Courts, you must
10 find as a matter of law that he has no
11 immunity. And that -- or that he has
12 acted maliciously as a matter of law in
13 order for them to proceed in this case.

14 THE COURT: Yeah. Okay.

15 MR. FLOREZ: So, I'm leaving time

16 --

17 THE COURT: Is this Ms. Lambert
18 right here?

19 MR. FLOREZ: No. They work for the
20 county. I'm sorry, Judge. Kim Smiddy,
21 paralegal working for the county and
22 Melanie Schimmel is a paralegal for the
23 County. They have been working with us
24 on the case. They helped us with the law
25 and everything. Prepared the wonderful

1 books and keep our pleadings in order.

2 THE COURT: Okay. I just -- they
3 just wanted to see what happens.

4 MS. SCHMIDT: We wanted to see what
5 is going on.

6 THE COURT: Are you arguing?

7 MS. HINNERS: Stacy Hinners for Ms.
8 Lambert. Addressing Mr. Florez's
9 argument about, towards immunity, under
10 Chapter 2744, the Ohio Supreme Court does
11 decide this year in a case we cited in
12 our brief. The First District decided,
13 actually in a case that the County cites,
14 this is Smith versus A.B. Bonded
15 Locksmith Incorporated.

16 Just so I am not misquoting
17 anybody, this is what the County says in
18 that case. They say that that case --
19 this is page four of their reply brief.
20 "Judge Painter extended the holding of
21 Sudnik by holding that employees of the
22 State who are acting within their scope
23 of employment were immune to State law
24 claims."

25 okay. Let see what Judge Painter

1 said. well, we're saying 2744.02 has no
2 application where an employee of a
3 political subdivision is sued. why?
4 Because the statute, 2744.02,
5 specifically applies just to the
6 political subdivision itself. An
7 employee under 2744.01 are defined as
8 employees of the subdivision that include
9 elected officials. In fact, in their
10 original motion on Page 35, the County
11 admits Hartmann is an employee of, so
12 this is what judge Painter says: This is
13 where he says you should go under R.C. 27
14 --

15 THE COURT: He's the clerk. He was
16 elected. it's a little different.

17 MS. HINNERS: Right. If you look,
18 and we brought the law with us, 2744.01
19 actually includes elected officials under
20 Division of Employee. So there's no --
21 there's no question that he belongs, at
22 any inquiry, doesn't involve 2744.01,
23 because he's an employee.

24 THE COURT: Okay.

25 MS. HINNERS: Let's look at the

1 subdivision. Okay. This is an employee
2 I'll show you it: Employee includes any
3 elected official or appointed official of
4 political subdivision.

5 THE COURT: I believe you.

6 MS. HINNERS: 2744.01 section B.
7 Okay. The employee then triggers, you
8 don't have to get proprietary versus
9 governmental, and all these
10 considerations that Mr. Florez went
11 through. Point 02. Section point 02
12 doesn't apply. And the their own case
13 law says it doesn't apply.

14 This is what Judge Painter said:
15 when employee sued -- this is where
16 2744.03(A)(6) and inquiry becomes. The
17 employee is not entitled to immunity if
18 the employee acted recklessly or
19 wantonly. This is a 12(B)(6) motion.
20 All we're testing is the sufficiency of
21 the complaint. There's no record on
22 which we can get into the climate or the
23 motivation or what Mr. Florez thinks
24 Mr. Hartmann was thinking at the time.
25 That record is still yet to be developed.

1 All we're here as is the complaint
2 sufficient enough to state a claim for us
3 to move forward? well, this is what we
4 pled. We pled that prior to posting Ms.
5 Lambert's personal identifying
6 information on the County Clerk's
7 website, the County Clerk knew, he knew
8 that the website was being used by
9 identity thefts to commit identify theft.

10 How did he know? well, there was
11 accusations in Federal Court, somebody
12 admitted to that there was a New York
13 Times article where they said, hey, by
14 the way, Hamilton County Clerk of Courts
15 website is posting this information, and
16 this creates a risk of identity theft.

17 There are several e-mails from
18 experts in this field to Hartmann or his
19 staff before this ever happened saying,
20 whoa, wait a second, you're creating a
21 huge risk of danger if you keep doing
22 this. He kept doing it.

23 So there's, on that record alone,
24 we have sufficiently stated enough for
25 purposes of 12(B)(6) to say he acted

1 recklessly. He knew there was a danger
2 and continued to act in face of that
3 danger. This is a 12(B)(6) motion, all
4 we need to do is plead that, and we have
5 done that.

6 So, there's no question, at least
7 for the purposes of 12(B)(6), there's no
8 immunity that just kicks in as a matter
9 of law. This Court can't legally judge
10 Mr. Hartmann's motivation or intent on a
11 12(B)(6) motion with no record before it.

12 On the doctrine of *lis alibi*
13 *pendens*, if you never heard of it --

14 THE COURT: I remember hearing it.
15 That's an interesting point, yeah.
16 Basically, a motion to dismiss is okay,
17 assuming --

18 MS. HINNERS: You state a claim.

19 THE COURT: Assuming you can -- you
20 could prove it. I had the gun suit.
21 Assuming you can prove everything, that
22 guns killed all these people and that,
23 you still don't have a case because, you
24 know, it's ridiculous, you could sue.
25 That's one case I threw out. I don't

1 grant too many motions to dismiss.

2 That's one case I threw out. My
3 argument was, you know, then you have to
4 sue gas manufactures and, you know,
5 people who make matches, people that use
6 matches to blow buildings up. So I said
7 -- so the argument, even assuming you can
8 prove everything in the complaint, it's
9 still not a complaint.

10 That's what a motion to dismiss is.
11 You're saying the idea of going into his
12 mental culpability as to how negligent he
13 was or whether he had gross reckless --

14 MS. HINNERS: Reckless, wanton.

15 THE COURT: That's something you
16 could decide on a motion to dismiss.

17 MS. HINNERS: Not in this case. We
18 pled he did, and he knew. We set
19 forth specified --

20 THE COURT: We don't really get to
21 that point. Their argument, it's based
22 on the statute.

23 MS. HINNERS: But what they are
24 doing, Your Honor, they are getting the
25 statute wrong. Because they are going --

1 well, Your Honor, you have to look at
2 2744.02. Ohio Supreme Court in the First
3 District said if you do that, you're
4 wrong. Because the only -- when an
5 elected official is sued, they are only
6 entitled to immunity consistent with
7 2744.03 section (A)(6). You don't have
8 to get into any governmental function,
9 proprietary function where they responded
10 to an emergency, none of that matters.

11 The only inquiry for an employee
12 when they are sued is, did they --
13 there's three different exceptions. One
14 of them, the one we were arguing here is:
15 Did they act recklessly or wantonly? I
16 mean, in this case you have --

17 THE COURT: Your argument is only
18 that that's something that can't be
19 decided on a motion to dismiss because it
20 takes --

21 MS. HINNERS: If you --

22 THE COURT: -- a little more
23 information. It could be something that
24 comes up on summary judgment?

25 MS. HINNERS: Absolutely. But a

1 12(B)(6) motion -- and this is, you
2 have -- we pled that he had knowledge of
3 the dangers, specific knowledge of
4 danger. He had knowledged -- not general
5 danger like in the gun case, guns could
6 kill people, guns are bad.

7 He knew that this website, what he
8 was doing precisely here, posting these
9 traffic tickets in unredacted form on a
10 website that anybody could get access to
11 on the Internet.

12 THE COURT: Okay.

13 MS. HINNERS: It was actually being
14 used by identity thieves to commit
15 identity theft.

16 THE COURT: You have all the other
17 decisions. He decides, AG decides. I
18 don't know about that. Then we're
19 getting in an issue --

20 MS. HINNERS: What he knew.

21 THE COURT: What you're arguing --
22 how do you know what he knew?

23 MS. HINNERS: You can't take
24 Mr. Florez's word. We have to depose
25 him, find out what he knew and when he

1 knew it.

2 THE COURT: Yeah, okay. I
3 understand your argument. Lis pendens,
4 you wanted to explain that.

5 MS. HINNERS: If you never heard of
6 it or it doesn't sound familiar.

7 THE COURT: I remember from law
8 school.

9 MS. HINNERS: Lis pendens, you
10 might have heard in Property law. That
11 has to do with when a piece of property
12 at issue in one case and another case is
13 filed, you have to put that other case,
14 you file a Notice of Lis Pendens. Hey,
15 wait a second, the property everybody is
16 fighting over, there's a case over here
17 you need to pay attention to because
18 we're first in line.

19 what they are saying in the
20 Doctrine of Lis Alibi Pendens, when you
21 look up Westlaw, there's exactly three
22 cases in 150 years that even brings it
23 up. They have to deal with, when you
24 bring the same exact case, the same exact
25 claims at the same exact time in two

1 different courts. That's not what
2 happened here. In fact, in Mr. Florez's
3 opening statement he said the District
4 Court said listen, you're --

5 THE COURT: You start out at the
6 District Court.

7 MS. HINNERS: The 1983 claim, they
8 dismissed the state claim for right of
9 pendency jurisdiction. Hey, take the
10 state claims to state court. That's what
11 we have done.

12 THE COURT: Because there was no
13 diversity or anything like that, no
14 Federal question?

15 MS. HINNERS: All in Hamilton
16 County, purely State claim. You take
17 them to State Court. That's what we have
18 done. I think the suggestion, hey, this
19 case, this case what they're all here
20 talking about is being decided by the
21 sixth circuit is frankly just
22 disingenuous.

23 We have briefed the Sixth Circuit
24 Appeal. The only issue is when there's
25 Federal constitutional right to privacy

1 of a person who wants identifying
2 information that has nothing to do with
3 privacy, invasion of privacy. These are
4 purely state claims. This Court
5 absolutely has jurisdiction over.

6 Let me, if I may, I want to talk
7 about the statute of limitations for the
8 privacy act. I noticed the County has
9 now abandoned their suggestion there's no
10 private cause of action to the Privacy
11 Act.

12 MR. FLOREZ: That's correct.

13 MS. HINNERS: Okay. If that's
14 still the argument, 1347.10, I brought it
15 for Your Honor. It says -- it says: It
16 set forth private cause of action for
17 harm under, for violation of private.

18 THE COURT: 1347?

19 MS. HINNERS: .10. We brought a
20 claim under Section A and Section B. I
21 don't know how else to debate that
22 argument, other than not a single one of
23 their case cites deals with someone
24 actually bringing a private cause of
25 action, 1347.10, I don't think a court

1 can make that statute disappear. So,
2 that is what it is.

3 You will see under Section B,
4 there's a two-year statute of limitations
5 under Civil Rule 15(C). It's the same in
6 State Court as it is in Federal Rule
7 15(C) says that: At any time, with leave
8 of the Court you can amend your complaint
9 to add claims as long as they relate back
10 to the original filing. The same facts
11 and same party to the original filing.

12 That's what we did here. If we
13 filed this claim today, it's no different
14 than we filed it two years ago. These
15 claims relate back to the claim that we
16 filed in December 2004 in District Court.
17 The fact that there's been dismissal for
18 right of pendency jurisdiction, and we
19 have been sent to State Court. Nothing
20 in 15(C) that tolls the clock on that, or
21 separates the relationship back.

22 I don't know where the authority is
23 that suggest that. 15(C), all it says is
24 you can state as many claims as you want,
25 whenever you want, as long as the Court

1 allows us to. And as long as they relate
2 back to the same facts and same parties,
3 because going back to Civil Rule 8, this
4 is a notice pleading. You're put on
5 notice as of December 2004 that these
6 were the facts and they were claims
7 coming out of here.

8 And so, the fact that you may
9 develop new theories during discovery or
10 things like that, the Court doesn't
11 penalize you for that as long as they
12 involve the same facts and the same
13 parties, and this does. We filed this
14 claim, just to be clear, September 2003,
15 ostensibly this was first published. We
16 filed the claim in Federal Court December
17 of 2004. There's a two-year statute of
18 limitations. We're well within that on
19 all three of these arguments.

20 with all due respect to the County,
21 they are objectively wrong, and the
22 motion to dismiss on those -- and we have
23 gone into considerable detail in these
24 briefs on some of the other arguments
25 which we're happy to break down for your

1 Honor if you have questions about any of
2 those, otherwise we will let those
3 arguments stand in our brief.

4 MR. JENKINS: I came prepared to
5 address those arguments, I didn't hear
6 Mr. Florez touch on any of them.

7 THE COURT: Do you want to address
8 them?

9 MR. JENKINS: I don't need to
10 bother you with my going on. He has not
11 raised them in argument. They are fully
12 briefed. In reply, I saw no response to
13 any of your many citations. I can go to
14 their authority and reveal the very fact
15 that the cases they cited, their reading
16 of the statute simply doesn't stand for
17 the proposition cited.

18 If you want me to regurgitate that,
19 I'm glad to. I don't think it's
20 necessary. It appears they are content
21 to stand on immunity and relate back.
22 Stacy has addressed that very, very well.
23 But we're here for you, if you think
24 that's helpful.

25 THE COURT: I don't know, were you

1 going to address --

2 MS. SEARS: Your Honor, I'm not
3 trying to sandbag. So, Chris, if you
4 would like to, I intend to touch briefly.
5 I don't want to give the Court the
6 impression that we believe immunity is
7 our most broadly based --

8 MS. HINNERS: Can I say one thing
9 before we -- the judicial immunity
10 argument that Mr. Florez raised was never
11 raised in the motion to dismiss brief.
12 And so, we say if the Court is going to
13 consider that at all, we would ask for
14 time to brief, the opportunity to brief
15 that.

16 I will say that the cases that
17 Mr. Florez cited, he cited two cases, I
18 had two quasi-judicial immunity case.
19 Both of those deal with functions of what
20 the Clerk of Court did when the Clerk of
21 Court was told by a Court to do them. So
22 here is a certificate of judgment, you go
23 file it, clerk, and he did.

24 So, the Clerk of Courts had no
25 discretion. There was no choice or

1 thinking there. He did what the Court
2 told him to do. No Court ever told --
3 not this Court, not anybody, ever told
4 Greg Hartmann he needed to put on the
5 website, to post traffic tickets
6 unredacted on that website and provide
7 unfettered public online access to
8 anybody who wanted to see that
9 information.

10 That's purely discretion on his
11 part. So any quasi-judicial immunity
12 argument that deals with when a Clerk of
13 Courts do something, specifically
14 instructed by a Court to do it is
15 inapplicable to the situation.

16 THE COURT: Okay.

17 MR. FLOREZ: If I could just
18 address that one little point, and I'll
19 turn it over to Pam.

20 When he receives a complaint, the
21 Court requires him to make that complaint
22 as part of the public record. Whether he
23 keeps it in a paper format that someone
24 can come in and photocopy and use that
25 information, or whether he makes it

1 available in a form and in media, which
2 he retains it, digital media he retains,
3 he scans all those in. There can't be
4 any difference in whether or not this is
5 violation --

6 MS. HINNERS: I would --

7 MR. FLOREZ: Let me finish.

8 THE COURT: Let him finish.

9 MR. FLOREZ: Stacy, if you will,
10 whether he has it in paper format behind
11 the counter and someone asked for it, he
12 can't ask who they are. He can't ask
13 what their purpose is. He has to simply
14 turn it over to them. The difference
15 between that and whether or not he makes
16 it available on a Court's website where
17 all you need is connection to the
18 Internet, there cannot be a difference in
19 determination in this case.

20 MS. HINNERS: Just to respond to
21 that real quick. What he's saying is the
22 Court requires him to post these records
23 in unredacted form is untrue. We have
24 briefed that ad nauseam in our brief that
25 just because information -- that's why

1 we're redacting right as we speak. why
2 social security numbers are being
3 redacted from public record. we'll say,
4 if Mr. Hartmann had no discretion over
5 there when we filed our lawsuit in
6 Federal Court, two days later we filed
7 under seal so we didn't tell the world
8 that, hey, identity thieves, here is
9 where you would go to hit the jackpot
10 for those that didn't already know.

11 He took the website down two days
12 later on his own accord. There was no --
13 there was no change in State law. There
14 was no order from this Court or anybody
15 else. He decided unilaterally to pull
16 that practice down. So, if he didn't
17 have the discretion to do it, if he
18 didn't have discretion to put the website
19 up in the first place, assuming he had
20 discretion to pull it down without any
21 authority from the Court. These facts,
22 they don't make sense with what actually
23 happened in this case.

24 THE COURT: Do you want to --

25 MR. JENKINS: I hesitate to, Judge,

1 but I think we were honest. I wanted to
2 be scrupulously honest to the Court. They
3 cite a lot of AG opinions, the defendant
4 does. In 2004, AG opinion prior to the
5 filing of this case, prior to our
6 bringing of any of our claims,
7 specifically told the Clerks of Courts if
8 you're going to publish these things
9 electronically, you must redact them.

10 A clerk was troubled about this and
11 asked, well, I know I have a duty to
12 redact them, before I give them to
13 someone at the desk, because the AG
14 recommended that years before, and the
15 Supreme Court held. So before they just
16 don't turn over unredacted documents to
17 anybody that walks up to the desk, a 2004
18 AG opinion said, hey, guess what, if
19 you're putting these things online, you
20 the, Clerk of Courts bear from your
21 budget the cost of redacting.

22 So, I mean, if they are fond of AG
23 opinions, I don't want to rely on them.
24 I don't think they are authority. I
25 don't think they are binding on anyone.

1 I think they are informed --

2 THE COURT: They are advice, like
3 legal advice, this could happen.

4 MR. JENKINS: It goes both ways.
5 So, he was not listening to the very
6 advise the person he now wants to cite as
7 authority. So, the bottom line, I think
8 Stacy more eloquently stated, anybody can
9 12(B)(6) motion. The complaint states
10 the claims. There is no bar that can
11 properly be found at this juncture that I
12 can discern, not unless you abuse Rule
13 12(B)(6).

14 THE COURT: Okay.

15 MS. SEARS: Judge, I was going to
16 reply. I'll be very brief. Just so
17 we're all very clear, I'll try to state
18 it as clearly as I can. Our position is
19 that Mr. Hartmann was sued in his
20 official capacity. Our position is if
21 you're going to sue him in his official
22 capacity, then 2744.02 is the section
23 that controls immunity when he's sued in
24 his official capacity.

25 THE COURT: As the clerk?

1 MS. SEARS: As the clerk he has
2 sovereign immunity, it is absolute. And
3 the only exceptions are contained in
4 2744.02(B), none of which apply.

5 However, for our conversation let
6 me say that if you sue Mr. Hartmann as an
7 employee --

8 THE COURT: Because he's an
9 employee.

10 MS. SEARS: Because he is an
11 employee under the Ohio Revised Code.
12 And if you choose to sue him in that
13 capacity, then Ms. Hinnens is right, then
14 now we're in the land of 2744.03, and we
15 are in the land of 27 --

16 THE COURT: How do you know if they
17 are suing in capacity as employer.

18 MS. SEARS: Look at the case
19 caption. However, it's up to you, Judge.
20 That's why we make this argument in an
21 alternative fashion. We're asserting
22 he's been sued in his official capacity.
23 Should you determine that we're
24 incorrect, now we're in the land of
25 2744.03, as Ms. Hinnens is arguing.

1 If we're in the land of 2744.03,
2 then we are in the land of 2744.03 as
3 interpreted by our First District Court
4 of appeals, including the Honorable Judge
5 Painter. If we are --

6 THE COURT: That's where you're
7 going to inculpable mental state?

8 MS. SEARS: Exactly.

9 THE COURT: which makes it
10 difficult on a motion to dismiss.

11 MS. SEARS: Let me talk about that
12 just briefly. If we're there, this is
13 our position, which you're free to agree
14 or disagree, it will be your decision.
15 But, our position is under 2744.03, if
16 Mr. Hartmann is being sued as employer,
17 our position is, as we set forth in our
18 reply brief, because it wasn't until we
19 had the response that we understood that
20 they were asserting a lack of immunity
21 from suit under 2744.03.

22 In our reply brief, we set forth an
23 argument that we believe Mr. Hartmann, as
24 a matter of law, has immunity from suit,
25 sir; not immunity from liability, but

1 immunity from suit. Immunity that
2 precludes discovery if immunity attaches,
3 that's the point. So, there's some
4 argument we get summary judgment. No, we
5 do not, it's immunity from suit. We are
6 asserting Mr. Hartmann has immunity from
7 suit as quasi-judicial officer of the
8 Court, because under 2903.08 he works at
9 the direction of the Court with regard to
10 court records.

11 And we cited cases, and I don't
12 want to regurgitate them in our original
13 motion in re, there's probably the most
14 foundational, which the Supreme Court
15 says the Court is in charge of the
16 court's records.

17 Now what is problematic and
18 interesting about this is that clerk has
19 a dual assignment. He works at the
20 discretion of the Court with regard to
21 public court records. He also has an
22 obligation under 149.43 because court
23 records are in fact public recordings.

24 So --

25 THE COURT: He does keep the

1 records.

2 MS. SEARS: Yes, he does. He does
3 so at the direction of the court with
4 regard to court records. Now, we're
5 asserting that --

6 THE COURT: He's in kind of a Catch
7 22.

8 MS. SEARS: Yes, it is. Exactly.
9 And so, we're asserting both with regard
10 to quasi-judicial immunity as well as
11 willful, wanton, reckless, that you can
12 find and should find as a matter of law,
13 not as a matter of fact, when it comes to
14 talking about the facts of what the two
15 Clerks of Courts did in this case,
16 regarding this website, we will be happy
17 to do that, if we get to that point.

18 Right now, let's assume every fact
19 they have alleged in their complaint is
20 completely accurate. What was the legal
21 climate? We're not asking for you to
22 find fact, we're asking, what was the
23 legal climate. The legal climate of the
24 publication was Beacon Journal. Social
25 Security numbers are not subject to

1 mandatory disclosure under 149.43 when
2 they are contained in personnel files,
3 but they are public record of purpose.
4 149.43. That's what the Supreme Court
5 said.

6 In 1996 the Supreme Court said, oh,
7 before -- you know what, when they are
8 already in public record and, Katie bar
9 the door, at that point we get an AG
10 opinion, legal advice to the elected
11 officials in this state. Gosh, based on
12 that, how do we reconcile Beacon Journal
13 and in Cincinnati Enquirer and the AG,
14 oh, fine.

15 THE COURT: I agree with that, but
16 see --

17 MS. SEARS: Listen, let me tell --

18 THE COURT: Now we're dealing with
19 mental, what is -- what is in his mind,
20 which only dealt with possibly a trial or
21 summary judgment, not a motion to
22 dismiss.

23 MS. SEARS: This is our position,
24 and you're free to disagree. Our
25 position is you will have to find as a

1 matter of law that reliance on the AG's
2 opinion, terms the Ohio Supreme Court is
3 malicious, reckless, you have to find
4 that on their facts they can prove that
5 reliance on the law is malicious and
6 reckless. That's our position.

7 Now, not only -- that's in 2001, I
8 believe, our Court of Appeals in Bardes
9 versus Todd says, Judge Painter: The
10 appropriate remedy of aggrieved party who
11 has a social security number in a public
12 record court filing is to move the Court
13 to direct the clerk to redact it.

14 That's the law in the First
15 District at the time of Ms. Lambert's
16 publication. That's the law. To suggest
17 now that this Court, on any set of facts,
18 can find that -- if that's the law that
19 the clerk who unilaterally then redacts
20 information from a public record, court
21 filing, who refuses to do that is
22 malicious, wanton, and reckless, that
23 cannot, they cannot prevail. It simply
24 cannot prevail. If that's the law,
25 that's the law.

1 He had absolutely no authority to
2 unilaterally redact or alter a public
3 record filed with the court. The only
4 avenue for that would be a court order
5 sealing that record or a court ruling
6 addressing it, or a Supreme Court case
7 addressing it, or the legislature
8 addressing it. None of those things were
9 done. There is no way with the state of
10 law at the time of this publication that
11 any set of facts can prove malicious,
12 wanton, and reckless, and our position is
13 based on that, this case should be
14 dismissed.

15 THE COURT: But there's another AG
16 case that said they should.

17 MS. SEARS: Absolutely, you know,
18 when they were decided, like last year,
19 about two years ago in State versus
20 Siroki, the Supreme Court for the very
21 first time --

22 THE COURT: When was that decided?

23 MS. SEARS: 2004 and 2005.

24 MR. JENKINS: I think Miss -- I
25 don't want to interpret her argument. We

1 cite in our brief a 1999 AG opinion.

2 THE COURT: Okay.

3 MR. JENKINS: Five years before
4 this publication. They don't deal with
5 that.

6 MS. SEARS: That was the
7 recommendation, what the AG said in 1996.

8 THE COURT: Those opinions are not
9 always the greatest.

10 MS. SEARS: What the AG said in
11 1996 was, we need to wait for a directive
12 from the Supreme Court and then, you
13 know, the AG changed. Now we have
14 differing opinions. Everybody is influx
15 again about what to do. And our First
16 District Court of Appeals sort of
17 clarifies, at least what the law is in
18 our First District.

19 So, there's no doubt, Your Honor,
20 what the climate of the law was. Again,
21 our position is that there's no set of
22 facts by which you could find that
23 elected Clerk of Courts in this state is
24 malicious based on the law at the time of
25 this publication.

1 THE COURT: Okay. I think it's an
2 uphill battle for them, but we're dealing
3 with a motion to dismiss now.

4 MS. SEARS: I understand we're
5 dealing --

6 THE COURT: I think it's a hard
7 case to prove on that theory. But a
8 motion to dismiss, it's a lot different.

9 MS. SEARS: That's our position. I
10 think I belabored it. You understand our
11 seminal position is there's absolute
12 immunity if you fail to find that.

13 THE COURT: You're saying he's
14 being sued as a public official?

15 MS. SEARS: Yes. And then the next
16 two arguments -- can I just briefly then
17 address lis pendens, Judge. What lis
18 alibi pendens, the same cause of action
19 benefits the same parties. That's
20 clearly the case. Shelby versus Bacon,
21 U.S. Supreme Court says, this Court, your
22 Court, has the duty to ask them to elect
23 which cause of action they are proceeding
24 on, unless there's not a completed
25 remedy. In either case, so what, you'd

1 have to find as a matter of law they
2 don't have a complete remedy.

3 Now what they have indicated for
4 the first time to you is that they have
5 abandoned their State claims in Federal
6 Court. And the reason I say that is this
7 case was dismissed on its pleadings.

8 THE COURT: Did they say that?

9 MR. MEZIBOV: The Judge sent us
10 here.

11 THE COURT: Watson send them here.

12 MS. SEARS: Can I address that? My
13 point is this, I made it in my brief.
14 They are dismissed without prejudice.
15 That's clearly true. But right now, the
16 case has been dismissed on its pleadings.
17 If he prevails in the Sixth Circuit, the
18 entire case is reborn, including their
19 state causes of action.

20 They have not indicated in their
21 notice of appeal that because this case
22 was dismissed right at its infancy, right
23 at the pleading stage, if the Sixth
24 Circuit, if they win the Sixth Circuit,
25 the whole case comes back.

1 So, my position is, under Shelby
2 versus Bacon, unless the Court finds --

3 THE COURT: The case comes back to
4 Judge Watson, Sixth Circuit, you're wrong
5 you shouldn't have thrown it back to the
6 State Courts.

7 MS. SEARS: Yes. What they
8 indicated, they have no intention of
9 doing that. They need to file something
10 in the Federal Court to the effect --

11 THE COURT: I don't think they
12 said, if you win in Judge Watson's you
13 come --

14 MR. JENKINS: If we get remanded
15 from the Sixth Circuit, I think what
16 Pam's argument actually say is that --

17 THE COURT: If you win in the
18 Sixth, you go back.

19 MR. JENKINS: You win in the Sixth
20 Circuit, then the issue she's raised
21 theoretically comes up. If we choose at
22 that point to bring exactly the claim we
23 brought there, I'm here to tell you, we
24 will represent it on the record, we will
25 not present the same claims to the

1 Federal Court that we are now pursuing
2 here. which is exactly why Pam's
3 argument doesn't hold any water today is
4 because we are not presenting the same
5 claims to Federal Court today that we're
6 presenting here. We have not appealed
7 those --

8 MR. MEZIBOV: Can I make one point?

9 THE COURT: She's not finished.
10 I'm sorry, it was my fault.

11 MS. SEARS: I understand.

12 THE COURT: Go on.

13 MS. SEARS: It's --

14 MR. MEZIBOV: Let me make --

15 THE COURT: Let her finish. I
16 screwed her up a little bit in her
17 argument. She had a train of thought
18 going. I interrupted her because I asked
19 her that one question. Go on, I'm sorry.

20 MS. SEARS: I'm just saying that's
21 all news to us. If that's the case,
22 that's the case. My point is, what the
23 law says, it's not a matter of abandoning
24 the claim here. And then what Shelby
25 versus Bacon says, they need to abandon

1 the entire cause of action unless the
2 Court finds lack of complete remedy.
3 That's the law. I understand what they
4 are saying, factually, they won't bring
5 the claims again.

6 THE COURT: We have not crossed
7 that bridge yet. It has not happened.
8 Really, it's in the future.

9 MS. SEARS: The fact is *lis pendens*
10 is the subject matter at bar. So, as a
11 matter of law, whether they abandon it or
12 not, the Court needs to find that the
13 Sixth Circuit will not provide complete
14 remedy. That's why this case is here.

15 what that really brings us to is
16 1347, their argument under 1347. Ms.
17 Hinners would suggest that's there's and
18 individual cause of action under 1347. I
19 don't know that Ms. Hinners is inaccurate
20 in that statement, but her statement
21 don't go far enough, and she expresses
22 some consternation about what we're
23 relying on.

24 And I would point the Court to our
25 reply brief. We're relying on three Ohio

1 Supreme Court cases. Our position is
2 that R.C. 1347, government acquisition
3 and recordkeeping of the government.

4 Our further position is R.C. 149.43
5 governs the disseminating of public
6 record by the government. The Ohio
7 Supreme Court has held Chapter 1347 is
8 not intended to shield personal
9 information from legitimate discovery
10 requests.

11 At the time of this publication,
12 there is no dispute that anybody could
13 walk into the clerk's office and get an
14 unredacted copy of this ticket, the
15 Enquirer, anyone, if this were a public
16 official you could. If it were your
17 traffic ticket, Your Honor, and everybody
18 who were interested in it could have gone
19 and gotten it and put it on their website
20 in its unredacted form. There's no
21 dispute.

22 MR. JENKINS: There's disputed --

23 THE COURT: wait. wait. wait.
24 wait. Let her finish.

25 MS. SEARS: The climate of the law

1 now is the Supreme Court has held, guess
2 what, everybody has to redact its stuff.
3 This Court, even prior to this Rule 11(K)
4 said, we're not going to, even though
5 this information is available as public
6 record at the offices of the court clerk.
7 We're not permitting public access.
8 That's all after this publication in
9 Judge Watson's chambers, about a
10 year-and-a-half-ago we had this
11 conversation.

12 Everyone in this room was very
13 clear that at the time of this
14 publication, anyone could go to the
15 Clerk's office and get an unredacted copy
16 of this ticket. There was not a sniff,
17 not even a vague notion by anybody in
18 this room or anybody in this building
19 that a Clerk of Court could alter a
20 filing with the clerk, absent a court
21 order.

22 That is just as clear as clear can
23 be. And that's the problem with a couple
24 of their other causes of action. That is
25 the case at the time, certainly not the

1 case now. Now we have got -- now we're
2 looking for software in this county to
3 redact social security numbers. Now
4 we're all over, State versus Siroki,
5 which was decided December 2005. That's
6 when the Supreme Court said, hey, clerks
7 you got to redact this stuff. But up
8 until then, no one had any sniff there
9 was any obligation in that regard.

10 So, the Supreme Court says Chapter
11 1347 does not provide individual cause of
12 action. Then the Supreme Court said in
13 Renfro, Chapter 1347 does not protect
14 individual's privacy interest, only
15 insofar as guarding against executive
16 governmental recordkeeping.

17 Then the Supreme Court of Ohio say
18 Chapter 1347 does not limit 14.43. Our
19 position is under 14.43 the clerk had a
20 statutory obligation to make public
21 records available in the median which
22 they are kept, which means electronic,
23 that's the median in this Chapter. He
24 has an obligation to make them available
25 in that median.

1 We're further saying at the time of
2 this publication there was no statutory
3 court rule, legislative direction to the
4 clerk that he had a unilateral ability to
5 redact them. Additionally, the Ohio
6 Rules of Superintendency as well as
7 149.43 provides the clerks has discretion
8 in terms of how he operates his office
9 and makes public records available to the
10 public. I should rephrase, 149.43 is not
11 the Rule of Superintendency, the Rule of
12 Superintendency of the Supreme Court says
13 that a clerk may operate a website.

14 With that said, our position is
15 that the Supreme Court has made it clear
16 that Chapter 1347 does not provide an
17 individual cause of action for a remedy
18 of disclosure of private information.
19 Any remedy that would exist, if there
20 were one, would be under 149.43.

21 So, if the Court allows that cause
22 of action to go forward, this Court must
23 find as a matter of law that 1347 does
24 provide that cause of action. What we're
25 suggesting to you is the Supreme Court

1 has ruled on that piece.

2 THE COURT: I don't know why we
3 have got into putting tickets on the
4 Internet. That's silly.

5 MR. JENKINS: That is exactly what
6 Your Honor should be asking. It's
7 because the clerk chose to, no one told
8 him to. He had no duty.

9 THE COURT: Why did we do that? We
10 didn't have to do that. Why did we ever
11 have put --

12 MR. JENKINS: Because somebody
13 chose to, that's what this case --

14 MS. SEARS: Here is what happened,
15 10 years before Al Gore invented the
16 Internet, Judge Cissell determined --

17 THE COURT: He's the one that
18 started all this, Cissell.

19 MS. SEARS: These were public
20 records.

21 THE COURT: He's the one that did
22 it. He started putting everything on the
23 Internet and refused to redact.

24 MR. MEZIBOV: He refused. He felt
25 it was the role of the legislature to do

1 it. He didn't want to do it
2 unilaterally. He had power to do it, he
3 didn't want to exercise it.

4 MS. SEARS: He did not have power
5 to do it. Actually, what happened is
6 this case --

7 THE COURT: He didn't want to. He
8 felt he was not allowed to.

9 MS. SEARS: Exactly.

10 THE COURT: I asked him that
11 before. Actually I said, what are we
12 doing putting all these things on the
13 Internet? And he said he thought --

14 MS. SEARS: He did not have
15 authority, at least he thought he didn't.

16 MR. JENKINS: His testimony was: I
17 was hoping someone would sue me. So we
18 did.

19 MS. HINNERS: That was his sworn
20 testimony.

21 MR. JENKINS: He knew from the day
22 he started this thing.

23 MS. SEARS: That's inaccurate. You
24 know that that's absolutely inaccurate.

25 MR. JACKSON:

1 MR. JENKINS: You were there.

2 MS. SEARS: I was there.

3 MS. HINNERS: Outside of the fact
4 of the complaint, Judge, if I can clear
5 up once and for all any different
6 rationale between whether Greg Hartmann
7 is sued as an employee or official
8 capacity, there is none. 2744.01 defines
9 political subdivision as Hamilton County,
10 that's it, the body itself.

11 If you read where -- actually the
12 definition for political subdivision, it
13 does not say anything about elected
14 officials either in official capacity or
15 as employee. 2744.01(B) where it defines
16 employee, specifically defines employee
17 as including an elected official. So,
18 there's no 2744.02 immunity for employee
19 or elected official.

20 THE COURT: Okay. I understand
21 that, you made that --

22 MS. HINNERS: That part is not -- I
23 hear Pam keep saying, it's our position.
24 This is not my position, this is what the
25 statute says.

1 THE COURT: I know, you made that
2 point. That's okay. You made that
3 point. You made that point.

4 MS. HINNERS: when they say the
5 Supreme Court held this, held that, I
6 would just ask Your Honor to look at
7 footnote 14 of our motion. We talk about
8 two cases -- they talk about two Supreme
9 Court cases, they talk about in detail.
10 Neither one of those cases stand for the
11 proposition, they don't say it and sure
12 the heck don't imply there's no private
13 cause of action under 1347.10 to do that.
14 They would have to say 1347.10 doesn't
15 exist. And it does and it says it gives
16 private cause of action to folks when
17 they are harmed by disclosure of their
18 information in violation of the Privacy
19 Act.

20 These are not positions that I
21 think the County can take in good faith,
22 because they contradict the statute,
23 plain language of the statute. This is
24 why I think we're getting frustrated on
25 this point. We have to spend so much

1 from the defendants. We had grave
2 concerns about some of the things it
3 says, and some of the things it says that
4 cases and statutes say. One of the
5 reasons we needed so long to respond was
6 to debunk those things.

7 what I found most disappointing was
8 repeated statements that a case says
9 this. And then when we go and read the
10 case -- for example, there's a case in
11 there they cite that says, you know,
12 cites the proposition the Court found no
13 problem with Internet publication of
14 Social Security numbers. I pulled the
15 court -- I had the law clerk pull it, the
16 words social security number never
17 appears. Stacy had the same problem. If
18 I have been unprofessional today and
19 jumpy, that's why I owe an apology,
20 that's out of frustration.

21 THE COURT: I don't care about
22 that. I always -- that's how I always do
23 arguments.

24 MS. SEARS: What Mr. Jenkins is
25 suggesting is I lied to the Court, I

1 misrepresented to the Court, dissembled.

2 THE COURT: That's dumb, I don't
3 care about that.

4 MS. SEARS: I kind of do.

5 THE COURT: Everybody has their own
6 interpretation of cases, though, I don't
7 think you're lying. You just grab a
8 case, you look at it, I think this means
9 this. Everybody has disagreements over
10 it. It's no big deal. I don't think
11 you're dishonest.

12 MS. SEARS: I hope Mr. Jenkins
13 isn't suggesting to the Court I would
14 ever purposely do that. I have been an
15 officer of the Court over 20 years.

16 THE COURT: Everybody does that.

17 MS. SEARS: I might interpret a
18 case, Your Honor.

19 THE COURT: Interpret it in your
20 favor.

21 MS. SEARS: I invite you to read it
22 all and come to conclusions.

23 MR. JENKINS: I wouldn't suggest
24 Pam or Mike are dishonest.

25 MS. SEARS: I hope not.

1 MR. JENKINS: It's difficult to
2 have engaged debate when some of the
3 positions being taken are not backed up
4 in what is cited.

5 MS. SEARS: Then you are accusing
6 me of being dishonest.

7 THE COURT: No, he's not. That's
8 stupid. Don't get into that, you know,
9 when you're lawyers, you always take a
10 case --

11 MS. SEARS: Exactly. I have no
12 problem with somebody saying --

13 THE COURT: -- and you try to
14 interpret it.

15 MS. SEARS: I don't have a problem
16 with someone saying I'm stupid. I have a
17 problem with somebody saying I
18 intentionally misled.

19 THE COURT: Mr. Rutter, do you want
20 to say anything?

21 MR. RUTTER: I'm here to monitor
22 the proceedings, Your Honor.

23 THE COURT: Okay. All right. So,
24 we have a trial date on April 7th, 2008.
25 So, let me look at these cases and decide

1 just, you know -- I just wanted to tell
2 you that's what I'm going to do.

3 I always have the party that wins
4 then prepares the entry, that way I
5 always tell you. I talk to the other
6 party, Bill or I called them and told
7 them, you know, if I say I am not going
8 to grant the motion to dismiss --

9 MS. SEARS: Do we float the entry?
10 This is first time -- I'm new at civil,
11 do we float the entry back and forth?

12 MS. HINNERS: You would show it to
13 us, however, it goes.

14 THE COURT: So it's not ex parte.

15 MS. SEARS: Since it's not on the
16 merits.

17 THE COURT: That's what I have been
18 doing for 21 years.

19 MS. SEARS: It's not on merits.

20 THE COURT: We have too many cases.
21 We wouldn't get our decisions done. So,
22 I'll tell you ahead of time. That's what
23 I'll do. I'll decide by the 28th at
24 nine.

25 MR. FLOREZ: Twenty-eighth or 24th?

1 THE COURT: Twenty-fourth.

2 (PROCEEDINGS CONCLUDED.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

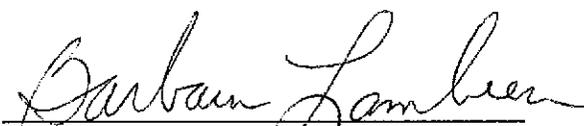
24

25

CERTIFICATE

1
2 I, BARBARA LAMBERS, RMR, the
3 undersigned, an Official Court Reporter for the
4 Hamilton County Court of Common Pleas, do
5 hereby certify that at the same time and place
6 stated herein, I recorded in stenotype and
7 thereafter transcribed the within 63, and that
8 the foregoing Transcript of Proceedings is a
9 true, complete, and accurate transcript of my
10 said stenotype notes.

11 IN WITNESS WHEREOF, I hereunto set my
12 hand this 17th day of July, 2007.

13
14 

15 Barbara Lambers, RMR
16 Official Court Reporter
17 Court of Common Pleas
18 Hamilton County, Ohio
19
20
21
22
23
24
25