

**IN THE OHIO SUPREME COURT**

**STATE, EX REL. DICK FLANAGAN**  
**62769 Riggs Road**  
**Bellaire, Ohio 43906,**

**Relator,**

**v.**

**DAVID M. LUCAS**  
**69396 Williams Road**  
**St. Clairesville, Ohio 43950,**

**Respondent.**

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**CASE NO.**

**13-0239**

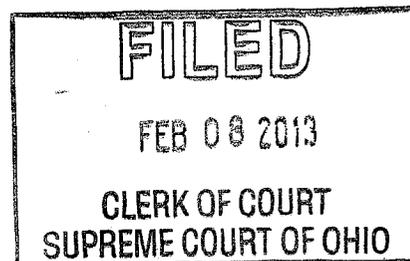
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**ORIGINAL COMPLAINT IN QUO WARRANTO**

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Attorney for Relator Dick Flanagan



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**PRAECIPE**

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Attorney for Relator Dick Flanagan

**NOW COMES** Relator Dick Flanagan (“Relator”), by and through counsel, pursuant to Chapter 2733 of the Revised Code, and for his claim in quo warranto against Respondent David M. Lucas (“Respondent”), states as follows:

**PARTIES AND JURISDICTION**

1. This is an original action seeking a writ of quo warranto ordering the immediate removal of Respondent from the office of Belmont County Sheriff and a declaration that Relator is entitled to the immediate possession of that office.

2. This action revolves around the statutory mandate of R.C. §311.01, et al. that an individual must meet to occupy the office of sheriff in the State of Ohio.

3. In this case, Respondent was sworn into the office of sheriff on January 7, 2013 notwithstanding the fact that he does not meet the mandatory qualifications of R.C. §311.01, et al. The Belmont County Board of Election has been on notice of Respondent’s lack of qualification but nevertheless certified Respondent as duly elected sheriff of Belmont County. Relator, the only person meeting the statutory qualification of R.C. §311.01, et al. that appeared on the November 6, 2012 ballot, is therefore, the duly elected sheriff of Belmont County. Therefore, Relator, the lawfully elected sheriff of Belmont County, brings this action to remove Respondent from the position of sheriff of Belmont County and to be declared entitled to possession of that office.

4. Relator brings this action in quo warranto pursuant to R.C. §2733.06.

5. Relator has given security for costs as required under R.C. §2733.06.

6. The Supreme Court of Ohio has original jurisdiction over this action pursuant to R.C. §2733.03 and Ohio Constitution Articles IV § 2(B)(1)(a).

## RELEVANT FACTS

7. The State of Ohio has adopted a mandatory qualification criteria to serve as sheriff in Ohio as stated in R.C. §311.01, et al.

8. R.C. §311.01(B)(8)(a) states in pertinent part the following mandatory language as a condition precedent to being a qualified candidate:

“...and, within the four-year period ending immediately prior to the qualification date, has been employed as an appointee pursuant to section 5503.01 of the Revised Code or as a full-time peace officer as defined in section 109.71 of the Revised Code performing duties related to the enforcement of statutes, ordinances, or codes;”

9. O.R.C §311.01(B)(9)(a) states the following requirement to become a sheriff in the State of Ohio:

“Has at least two years of supervisory experience as a peace officer at the rank of corporal or above, or has been appointed pursuant to section 5503.01 of the Revised Code and served at the rank of sergeant or above, in the five-year period ending immediately prior to the qualification date;”

10. Five years prior to the qualification date for Respondent would be December 7, 2006. Respondent retired on October 31, 2007, he does not meet the supervisory requirement as mandatorily established by the statute.

11. Respondent has lived in Florida for substantial periods of time during the past five years but his application has no reference to any residence or domicile but St. Clairsville, Ohio. His application for sheriff is false. The board of Elections is required by O.R.C §3501.11(Q) to verify his residential status but has refused to date to perform its statutory obligation.

12. Previous sheriff of Belmont County, Fred Thompson, filed a protest on December 23, 2011 whereby Mr. Thompson specifically notified the Belmont County Board of Elections

that Respondent did not meet the statutory qualification of R.C. §311.01(B)(8) and (B)(9). Additional filings in December, 2012 have been made with the Board of Elections asserting the same by Gary Landers and Relator but the Belmont county Board of Elections has ignored its statutory obligation as required by R.C. 3501.11(J) and (K) and has refused to investigate the qualifications of Respondent, David M. Lucas.

13. Relator has asked the Belmont County Board of Election by letter on or about December 28, 2012 challenging Respondent's legal right to serve as sheriff and asked for the Board to institute an action in quo warranto. The Belmont County Board of Election has not instituted any such action and instead because of misfeasance, malfeasance and neglect has permitted Respondent to occupy the position of sheriff although illegally.

14. On or about January 7, 2013, notwithstanding the protestations to the Belmont County Board of Election by Relator herein, Respondent was sworn in as sheriff in Belmont County.

15. Relator, through his undersigned attorney, on December 27, 2012 specifically requested that the prosecuting attorney of Belmont County file an action in "Quo Warranto" to preclude the illegal expenditure of County funds which would occur once Respondent was sworn in as sheriff. Belmont County prosecuting attorney refused to institute said action and communicated same to the undersigned attorney on January 4, 2013.

16. On or about December 28, 2012, Relator specifically requested the Secretary of State and the Belmont County Board of Election to take the following actions: (i) Mr. Lucas be disqualified as the duly elected candidate as he does not meet the mandatory statutory qualifications and therefore, not properly elected; (ii) The Belmont County Board of Elections

forwards this protest immediately to Ohio Secretary of State, Mr. John Husted, and request any certification of David M. Lucas be declared invalid; and (iii) Richard Flanagan, the only authorized candidate meeting O.R.C §311 et. al in the foregone election, be certified as sheriff of Belmont County, Ohio.

17. Relator specifically challenged the legal authority of Respondent with the Belmont County Board of Elections on or about December 28, 2012 by letter. Relator specifically asked the Board of Elections to perform an investigation of Respondent's qualifications pursuant to R.C. §3501.11(J) and (K) and declare Relator the winner of the office of Belmont County sheriff. Belmont County Board of Elections has not responded to date.

18. Respondent, David M. Lucas, retired on October 31, 2007 and was appointed as a special deputy on the same day, October 31, 2007. On Respondent's Ohio Peace Officer Appointment History Form had the block for Appointment Status checked "special" and not the block "full-time" although offered on the form as to which Respondent signed under oath on November 7, 2007.

19. Respondent has not performed the function of a full-time police officer at any time from October 31, 2007 through the qualification date (as described in R.C. §311.01(H)(1)) of December 7, 2011.

20. R.C. §311.01(H)(1) states as follows:

"Qualification date" means the last day on which a candidate for the office of sheriff can file a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate, as applicable, in the case of a primary election for the office of sheriff; the last day on which a person may be appointed to fill a vacancy in a party nomination for the office of sheriff under Chapter 3513. of the Revised Code, in the case of a vacancy in the office of sheriff; or a date thirty days after the day on which a vacancy in the office of sheriff occurs, in the case of an appointment to such a vacancy under section 305.02 of the Revised Code.

21. Qualification date for the election in issue is December 7, 2011.
22. Respondent did not perform the mandatory 16 hours required by the Belmont County sheriff to be a member of the reserve in the Belmont County Sheriff's office at any time from October 31, 2007 through December 7, 2011.
23. Respondent did not perform any full-time police work during the period of November 1, 2007 through December 7, 2008.
24. Respondent did not perform any full-time police work during the period of November 1, 2008 through December 7, 2009.
25. Respondent did not perform any full-time police work during the period of November 1, 2009 through December 7, 2010.
26. Respondent did not perform any full-time police work during the period of November 1, 2010 through December 7, 2011.
27. Respondent did not operate in a supervisory capacity as a police officer during the period of November 1, 2007 through December 7, 2008.
28. Respondent did not operate in a supervisory capacity as a police officer during the period of November 1, 2008 through December 7, 2009.
29. Respondent did not operate in a supervisory capacity as a police officer during the period of November 1, 2009 through December 7, 2010.
30. Respondent did not operate in a supervisory capacity as a police officer during the period of November 1, 2010 through December 7, 2011.
31. Respondent, in his qualification paperwork, after being duly sworn on September 1, 2011 asserted that the facts contained in the Application for Qualification as a candidate were true. Respondent did not list his address for his home in Florida. Additionally, in his

application, Respondent asserted he worked as a reserve officer for Belmont County during the period of 2007 to present.

32. Respondent lived in Florida throughout the period of October 31, 2007 through the qualification date of December 7, 2011 but Respondent did not list his Florida residence at 4673 Sines Lane, Charlotte County, Florida 33981.

33. Respondent established domicile in the State of Florida during the October 31, 2007 through December 7, 2011 timeframe.

34. Respondent, David M. Lucas, based on information and belief, established a residency in Florida during the period from 2007 through 2011 and therefore, paid no Ohio State Income Tax during said period.

35. Respondent, David M. Lucas, has asserted that Judge Sargus approved his qualification for sheriff.

36. Respondent, David M. Lucas, has no documentation nor has he provided the Belmont County Board of Election showing that Respondent worked as a full-time police officer at any time subsequent to his retirement of October 31, 2007 through the qualification date of December 7, 2011.

#### **CLAIM FOR RELIEF**

37. Relator incorporates by reference the allegations contained in the preceding paragraphs as if fully rewritten herein.

38. From on or about January 7, 2013, Respondent, well knowing the true, lawful, and rightful occupant of the office of Belmont County sheriff to be Relator, has unlawfully usurped the office, and entered into the exercise of all the powers and duties of the office. By this unlawful usurpation, Respondent possesses the office, and the emoluments, immunities, and

privileges appertaining to the office, contrary to the laws of the State of Ohio, and against the right of Relator.

39. Relator claims entitlement to the office of Belmont County sheriff, him being the only qualified candidate appearing on its November 6, 2012 general election. At all times relevant, Relator is, and was, competent and qualified to hold said office.

40. Relator is entitled to a writ of quo warranto removing Respondent from the office of Belmont County sheriff and declaring Relator to be entitled to possession of that office.

41. Relator is entitled to a writ of quo warranto removing Respondent from the office of Belmont County sheriff and declaring Relator to be entitled to possession of that office.

42. The Affidavit of Relator setting forth and supporting the facts set forth herein is attached hereto as Exhibit 1.

**WHEREFORE**, Relator respectfully requests:

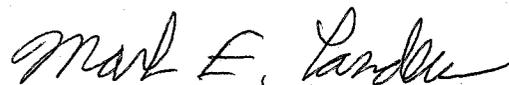
a. That a peremptory writ in quo warranto be issued ousting Respondent from the office of sheriff, Belmont County, and that Relator be declared entitled to possession of that office;

b. Alternatively, an alternative writ should be issued;

c. An award of costs of this suit, including attorney fees; and

d. Such other and further relief as the Court deems just, equitable or in accordance with law to include, but not limited to, requiring Respondent to pay back any compensation received since January 7, 2013.

Respectfully submitted,



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Mark E. Landers (0026042)  
2071 Aspen Ridge  
Dayton, OH 45459  
Phone: (937) 609-5783  
Email: mark.landere.sq@gmail.com

Attorney for Relator Dick Flanagan

TO THE CLERK OF THE SEVENTH DISTRICT COURT OF APPEALS:

Please serve a copy of the Summons, Original Complaint in Quo Warranto and Memorandum in Support of Original Complaint in Quo Warranto by certified mail, return receipt requested, upon the following Respondent and at the following address:

**DAVID M. LUCAS**  
**69396 Williams Road**  
**St. Clairesville, Ohio 43950**

Respectfully submitted,



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Mark E. Landers (0026042)  
2071 Aspen Ridge  
Dayton, OH 45459  
Phone: (937) 609-5783  
Email: mark.landens.esq@gmail.com

Attorney for Relator Dick Flanagan

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<b>62769 Riggs Road</b>	*	
<b>Bellaire, Ohio 43906,</b>	*	
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<b>Relator,</b>	*	
	*	
<b>v.</b>	*	
	*	
<b>DAVID M. LUCAS</b>	*	
<b>69396 Williams Road</b>	*	
<b>St. Clairesville, Ohio 43950,</b>	*	
	*	
<b>Respondent.</b>	*	
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**AFFIDAVIT OF DICK FLANAGAN**

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Attorney for Relator Dick Flanagan

STATE OF OHIO            )  
  )  
COUNTY OF BELMONT    )        SS:

NOW COMES Dick Flanagan, being duly sworn according to law, and hereby states as follows:

1. I am the Relator and qualified candidate for sheriff appearing on the ballot on November 6, 2012 and at all times meet the qualifications of O.R.C. §311.01, et al.

2. I have personal knowledge of the facts stated in this Affidavit and I am competent to testify if called as a witness.

3. The State of Ohio has adopted mandatory qualifications to serve as sheriff in the State of Ohio as a condition precedent to occupying said office as sheriff and said qualifications are contained in O.R.C. §311.01, et al.

4. On November 6, 2012, David M. Lucas was elected in the general election and certified by Belmont County Board of Elections.

5. On or about December 23, 2011, the original protest of David M. Lucas not meeting mandatory qualification criteria of O.R.C. §311.01(B)(8) and (B)(9) was filed by outgoing sheriff Fred Thompson. Subsequent filings protesting and challenging the qualifications of Respondent David M. Lucas with the Belmont County Board of Elections by Relator and Gary Landers, an elector of Belmont County, has occurred. The Belmont County Board of Elections refused to conduct any investigation as required by O.R.C. §3501.11(J) and (K) and have publicly so admitted.

6. On or about January 7, 2013, notwithstanding the protestations by me and others with the Belmont County Board of Elections, Mr. Lucas was sworn in as sheriff. This act is objected to by me as Relator and the duly elected sheriff of Belmont County.

7. No further action has been taken by the Belmont County Board of Elections or the Ohio Secretary of State notwithstanding requests to prevent the illegal occupation of the sheriff position by Respondent Dave M. Lucas. Additionally, the Prosecutor of Belmont County was asked to file a Writ of "Quo Warranto" to remove Respondent David M. Lucas from his illegal occupation of office.

8. Each day since January 7, 2013, Respondent David M. Lucas has occupied the office of sheriff of Belmont County and has purported to exercise the rights and duties of that office although illegally. The paperwork submitted by Respondent David M. Lucas shows unequivocally that he has not been a full-time paid officer within four years of the qualification date (December 6, 2011) nor has he performed in a supervisory capacity in two of the last five years of the qualification date. The aforementioned establishes that Respondent David M. Lucas is occupying the office of sheriff illegally as Respondent does not meet the qualifications of O.R.C. §311.01(B)(8) and (B)(9).

9. Respondent David M. Lucas misrepresented his status as a full-time police officer during the period of October 31, 2007 through September 1, 2011 as he performed no full-time police responsibilities with the Belmont County Sheriff's office during said period of time.

10. Respondent David M. Lucas wrote on his Qualification Documents that he served as a reserve officer with the Belmont County Sheriff's office during the period of October 31, 2007 through September 1, 2011 but there exists no documentation to substantiate Respondent David M. Lucas's work as a reserve officer.

11. Respondent David M. Lucas has been repeatedly asked since December, 2012 to answer the question of whether he performed full-time police work and acted as a supervisor as required by O.R.C. §311.01(B)(8) and (B)(9) but he has refused to answer said question from

members of the media.

12. Respondent David M. Lucas has provided a statement that Administrative Judge Sargus certified his qualifications. Judge Sargus, according to Ohio law, does not certify any qualifications of a candidate for sheriff as Judge Sargus acts in a ministerial capacity.

13. Respondent David M. Lucas, based on information and belief, has lived in Florida for a significant period of time from October 31, 2007 through present as evident by virtue of his personal residence at 4673 Sines Lane, Charlotte County, Florida, 33981. Respondent David M. Lucas's wife is presently residing in Florida at their Florida resident.

14. Respondent David M. Lucas did not list any residence in Florida on his qualifications paperwork notwithstanding the requirement to list all home addresses six years prior to qualification date.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
Dick Flanagan

Sworn to before me and subscribed in my presence this 2 day of February, 2013.

  
Notary Public



MARK EDWARD LANDERS, Attorney at Law  
Notary Public, State of Ohio  
His Commission has no expiration date.  
Section 147.03 O. R. C.



This action revolves around the failure of a candidate to meet the statutory requirements of O.R.C. §311.01, et al. in order to serve as sheriff in Belmont County, Ohio. Because Respondent does not meet the mandatory qualifications of O.R.C. §311.01(B)(8) and (B)(9), Respondent is not lawfully entitled to hold the office of sheriff of Belmont County, Ohio. Relator is entitled to hold that office because he was the only qualified candidate that appeared on the ballot for the general election on November 6, 2012.

I. SUMMARY OF RELEVANT FACTS

On or about December 23, 2011, Fred Thompson filed a protest contesting the qualification of Respondent David M. Lucas to serve as sheriff. Affidavit of Dick Flanagan ("Flanagan Aff.") (attached as Exhibit 1 to Complaint). Numerous protests in December 2012 were filed contesting the qualifications of David M. Lucas, Respondent to serve as sheriff, but were denied by the Belmont County Board of Election. Additionally, Relator herein or about December 27, 2012 requested that the Belmont County Board of Elections file an action in quo warranto to prevent Respondent David M. Lucas from occupying the office of sheriff illegally. Since January 7, 2013, Respondent David M. Lucas has assumed the position of sheriff in Belmont County and purported to exercise the rights and duties of that office. The Belmont County Board of Elections has refused to declare the election of David M. Lucas as sheriff of Belmont County as null and void notwithstanding the fact that Respondent's paperwork establishing his qualification to serve as sheriff unequivocally show that he does not meet mandatory requirements of O.R.C. §311.01(B)(8) and (B)(9) which is a condition precedent to serving as sheriff.

## II. LAW AND ARGUMENT

“For a writ of quo warranto to issue, ‘a relator must establish (1) that the office is being unlawfully held and exercised by respondent, and (2) that relator is entitled to the office.’” *State, ex rel. Newell v. Jackson*, 118 Ohio St. 3d 138, 2008-Ohio-1965, 886 N.E.2d 846, ¶[6], quoting *State, ex rel. Paluf v. Feneli* (1994), 69 Ohio St. 3d 138, 141, 630 N.E.2d 708. In this case, Respondent is unlawfully holding and exercising the office of sheriff of Belmont County, and Relator is entitled to that office.

### A. The Ohio Revised Code unambiguously requires certain qualifications to serve as sheriff in Ohio.

O.R.C. §311.01(B)(8)(a) states in pertinent part the following mandatory language as a condition precedent to being a qualified candidate:

“...and, within the four-year period ending immediately prior to the qualification date, has been employed as an appointee pursuant to section 5503.01 of the Revised Code or as a full-time peace officer as defined in section 109.71 of the Revised Code performing duties related to the enforcement of statutes, ordinances, or codes;”

O.R.C §311.01(B)(9)(a) states the following requirement to become a sheriff in the State of Ohio:

“Has at least two years of supervisory experience as a peace officer at the rank of corporal or above, or has been appointed pursuant to section 5503.01 of the Revised Code and served at the rank of sergeant or above, in the five-year period ending immediately prior to the qualification date;”

The question here is whether an individual can serve as sheriff when he does not meet the mandatory qualification of O.R.C §311.01, et al.

B. Relator is entitled to the office of sheriff.

Because no other candidate appeared in the general election on November 6, 2012 but for Relator Dick Flanagan, the Belmont County Board of Elections must certify Relator Dick Flanagan as the duly elected candidate and appoint Relator Dick Flanagan as Sheriff of Belmont County with term commencing January 7, 2013.

III. CONCLUSION

For the foregoing reasons, this Court should issue a peremptory writ ousting Respondent from the office of sheriff, Belmont County and declaring that Relator Dick Flanagan is entitled to possession of that office.

Respectfully submitted,



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