

IN THE SUPREME COURT OF OHIO

The State, ex rel. Dick Flanagan

Relator,

v.

David M. Lucas

Respondent.

* **Original Action in Quo Warranto**
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* **Case No. 13-0239**
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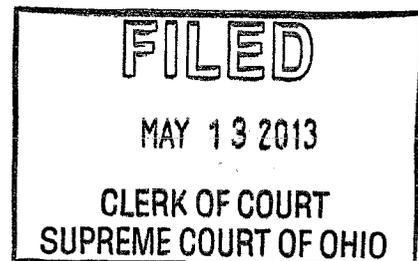
**RELATOR'S RESPONSE TO RESPONDENT'S MOTION
FOR JUDGMENT ON THE PLEADINGS TO AMENDED COMPLAINT**

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I. CASE HISTORY

Relator in this matter does not dispute the facts as listed in this section of Respondent, David M. Lucas's, Motion for Judgment on the pleadings as they are not relevant to disposition of case herein. The issue before this Honorable Court is whether respondent meets the statutory requirement to serve as Sheriff and not whether he served as a deputy for 26 years or whether he performed a few hours as a special deputy. The argument section of Respondent's Motion interjects a factual scenario that Respondent did not include in his Case History. For further clarification, as contained in Exhibit 2 to Amended Complaint, the following facts are relevant to a proper determination. Additionally, Relator provides Exhibit 4 as further documentation relevant to the dispute at issue.

Upon Relator learning that Respondent may not possess adequate qualifications, a number of personal phone calls and open record requests were made to the Belmont County Board of Elections subsequent to the November 6, 2012 general election. These requests were generated because, in the opinion of Relator and others, Respondent had portrayed himself in certain pictures as if he were a full-time police officer notwithstanding his retirement on October 31, 2007. Relator and his advisors were puzzled and wanted to find out what police work Respondent had performed since his picture was indicative of an active, full-time police officer in uniform. Thereafter, it became clear that Respondent did not perform full-time police work as required by R.C. § 311.01(B)(8) and (9) and as substantiated by Exhibits 1-3 attached to the Amended Complaint and Exhibit 4 attached hereto.

The Belmont County Board of Elections provided the documents in its file relative to Respondent and his alleged qualifications on or about the first week of December 2012. (See Exhibit 3). The documents included therein established conclusively that Respondent did not

meet the statutory requirements of R.C. § 311.01(B)(8) and (9) in that he performed no full-time police work since his retirement on October 31, 2007 and nor did he act in a capacity as Corporal or above at any time since retirement as required by R.C. § 311.01(B)(9).

Relator, in the pursuit of justice, on numerous occasions throughout the period of December 2012, protested, challenged and sought an investigation by the Belmont County Board of Elections in reference to Respondent's qualifications. The Belmont County Board of Elections effectively did not investigate Respondent so Relator then sought the intervention of Ohio Secretary of State John Husted. Unfortunately, nothing was gained from those efforts as well. Thus, a quo warranto complaint needed to be filed before this Honorable Court. Respondent, in his Motion for Judgment on the Pleadings attempts to re-write history concerning his lack of qualifications. However, it is clear that history will be made in Belmont County upon his removal as Sheriff as the law so requires. Respondent, simply cannot rewrite or alter the requirements that the Ohio Legislature has established as a condition precedent to serving as Sheriff in Ohio. Therefore, this Honorable Court is requested to expedite his prompt removal as Respondent Lucas clearly occupies the office of Sheriff of Belmont County illegally.

II. STANDARD OF REVIEW

Civil Rule 12(C) permits consideration of the Complaint and Answer when a court determines whether to grant a motion for judgment on the pleadings. Civil Rule 12(C) motions are specifically for resolving questions of law. *Peterson v. Teodosio* (1973) 34 Ohio St. 2d 161, 166. Under Civ. R. 12(C), dismissal is appropriate where a court (1) construes the material allegations in the Complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party is true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *State ex rel. Midwest Pride, I.V.*,

Inc. v. Pontious, 75 Ohio St. 3d 565. Thus, Civ. R. 12(C) requires a determination that no material factual issues exist and that the movement is entitled to judgment as a matter of law. *Id.*

To be entitled to the writ of quo warranto, the Relator must establish that the office is being lawfully held and exercised by Respondent, and that Relator is entitled to the office. *State ex rel. Varnau v. Wenninger*, (2012), 131 Ohio St. 3d 169 (other citations omitted). Moreover, if a Relator in a quo warranto proceeding fails to establish entitlement to the office, judgment may still be rendered on the issue, whether Respondent lawfully holds the disputed office. *Id.* citing *State ex rel. Myers v. Brown* (2000), 87 Ohio St. 3d 545, 547.

III. ARGUMENT

A. *Relator's original Complaint is not barred under the doctrine of laches.*

Respondent asks this Court to find as a matter of law that Relator's complaint is barred by laches. It is respectfully argued that this Court cannot find as a matter of law that laches exists, given the disputed facts as to Relator's "actual knowledge." Laches is an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party. *Comin v. Bailey* (1984), 15 Ohio St. 3d 34, 35 quoting *Smith v. Smith* (1957), 107 Ohio App. 440, 443. Laches is predominantly a question of fact to be resolved according to the circumstances of each individual case and, as such, is within the sound discretion of the trial court. *Bitonte v. Tiffin Sav. Bank* (1989), 65 Ohio App. 3d 734, 739.

- (i) *Respondent is simply wrong in his assertion that Relator knew of allegations of Respondent's lack of qualifications dating back to December, 2011.*

Respondent claims that Relator, based on ¶12 of Relator's Complaint and ¶¶ 20-22 of his affidavit, possessed actual knowledge of the qualifications, or lack thereof, of Respondent even prior to the general election.

Relator's Complaint at ¶12 specifically reads:

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. Section 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.

Respondent wants this Honorable Court to glean from ¶12 and his affidavit at ¶¶20-22 that Relator had actual knowledge of the qualifications of Respondent, essentially based on a pre-primary filing that he did not participate in and nor was he aware of at the time of filing. This Honorable Court is urged to disregard the baseless and unsubstantiated assertions that Relator knew the factual and legal basis of (former) Sheriff Fred Thompson's complaint to the Belmont County Board of Elections in December 2011 as there is no evidence to support such an assertion. On the contrary, the record establishes through the sworn testimony of Respondent that he became aware of the legal and factual basis of Thompson's complaint when he first saw it in early December 2012 after being so provided with a copy by the Belmont County Board of Elections. (See Relator's Second Affidavit at Exhibit 2 and Exhibit 4.) Specifically, Relator desires any and all assertions made by Respondent in ¶¶20-22 as subject conversations never took place on February 2, 2012 nor any other time. (See Exhibit 4.)

Simply put, there is nothing, based on the pleadings that support the Respondent's argument that actual knowledge was possessed by Relator as to the lack of qualifications of Respondent. Relator did not know the basis or the disposition of said protest until Relator reviewed the complaint by Sheriff Fred Thompson in December 2012. (See Relator's Second Affidavit at Exhibit 2 and Exhibit 4 attached hereto.)

Respondent also claims that “once Flanagan secured his party’s nomination, he held both the right and duty to address the Lucas qualification issue(s) with the utmost diligence, as he held actual knowledge of them at all times relevant. (See Respondent’s Motion at Page 6.) Again, there is nothing in the pleadings to indicate actual knowledge as alleged by Respondent during the timeframe alleged by Respondent. When knowledge was ascertained, Relator did attempt to prompt the Belmont County Board of Election to conduct an investigation pursuant to its statutory election responsibility but said Board refused to look at Respondent’s qualifications although the documents itself show Respondent is not qualified. (See Qualification Document submitted to Board of Election at Exhibit 3 and Exhibits 1, 2 and Exhibit 4 attached hereto.) Thus, when this so-called actual knowledge was finally gained, prompt action was taken to remedy the situation.

(ii) *The Doctrine of Laches is not a defense under the present set of facts nor this timely action of quo warranto against Respondent.*

Under this subsection, Respondent again assumes a fact, being is actual knowledge on the part of Relator that is simply not present in this case. From that erroneous supposition, Respondent then proceeds to argue that this Court has established a long lineage of cases involving laches in quo warranto actions. To the contrary, there is no case with similar facts wherein this Honorable Court has found laches to allow a Respondent to prevail. The case of *State ex rel. Varnau v. Wenninger* (2012), Ohio St. 3d 169 is probably the most similar case on a factual basis to the case at bar. In *Varnau*, this Court found that quo warranto could not be used to unseat an incumbent sheriff based on lack of qualifications because that sheriff had been elected for three previous terms prior to the quo warranto action being filed. This Court specifically stated, “Varnau could have raised his claims by filing an action for quo warranto

during Wenninger's first 4-year term of office beginning in January, 2001, instead of waiting until Wenninger had already begun his third four-year term of office beginning in January 2009 to raise his belated claim." Id. at p. 171-172.

In the present case, Relator filed his quo warranto action very soon after Respondent began his first term in office. Indeed the action was filed just days after receipt of documents from Belmont County Sheriff's office that established that Respondent performed no work as reserve officer from October 31, 2007 through the end of December 2011. (See Relator's Second Affidavit at Exhibit 2).

Again, Respondent claims that this case is distinguishable from *Varnau* in that the present matter entails "a losing candidate who had 'actual knowledge' of the issues he now raises in quo warranto, but did nothing for a full year before filing a legal challenge of any kind." There is absolutely nothing in the record to substantiate such an assertion. To the contrary, the record is now complete that Relator only became aware of the complaint in December 2012. (See affidavit at Exhibit 2 and Exhibit 4 attached hereto.) Instead of arguments based on the law encompassing the underlying factual realities, Respondent essentially attempts to scare this Court into believing that allowing a quo warranto action in this matter will open the floodgates to "untold numbers of candidates who will 'hold their fire' until after an election's results are known." This tactic is being used to masquerade the true gist of Relator's complaint in quo warranto, and that is the lack of qualifications of the Respondent.

(iii) *Respondent lacks the full-time police officer work as well as supervisory role as required under 311.01 (B)(8) and (B)(9).*

The Ohio revised Code is very specific as to the requirements to serve as sheriff of a county. It reads, in pertinent part, as follows:

(B) Except as otherwise provided in this section, no person is eligible to be a candidate for sheriff, and no person shall be elected or appointed to the office of sheriff, unless that person meets all of the following requirements:

(8) The person meets at least one of the following conditions:

(a) Has obtained or held, within the four-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio peace officer training commission or has been issued a certificate of training pursuant to section 5503.05 of the Revised Code, 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;

(b) Has obtained or held, within the three-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio peace officer training commission and has been employed for at least the last three years prior to the qualification date as a full-time law enforcement officer, as defined in division (A)(11) of section 2901.01 of the Revised Code, performing duties related to the enforcement of statutes, ordinances, or codes.

(9) The person meets at least one of the following conditions:

(a) 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;

(b) Has completed satisfactorily at least two years of post-secondary education or the equivalent in semester or quarter hours in a college or university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located or in a school that holds a certificate of registration issued by the state board of career colleges and schools under Chapter 3332. of the Revised Code.

The word "full-time" is not defined by statute for purposes of R.C. 311.01. Cf. R.C. 124.382 (defining "[f]ull-time permanent employee" for purposes of R.C. 124.382-.383 and R.C. 124.386.-388 as "an employee whose regular hours of duty total eighty hours in a pay period in a state agency, and whose appointment is not for a limited period of time"); R.C. 325.19(J)(1)

(defining “[f]ull-time employee” for purposes of R.C. 325.19 as “an employee whose regular hours of service for a county total forty hours per week, or who renders any other standard of service accepted as full-time by an office, department, or agency of county service”). See generally R.C. 124.18(A) (“[f]orty hours shall be the standard work week for all employees whose salary or wage is paid in whole or in part by the state or by any state-supported college or university”). The word “full-time,” therefore, should be construed according to its ordinary meaning and common usage. R.C. 1.42; see 1986 Op. Att’y Gen. No. 86-077 at 2.428.

Webster’s New World Dictionary 564 (2d college ed. 1986) defines the adjective “full-time” as “designating, of, or engaged in work, study, etc. for specified periods regarded as taking all of one’s regular working hours.” See *The American Heritage Dictionary* 538 (2d college ed. 1982) (“full-time” means “[e]mployed for or involving a standard number of hours of working time”); see also 1962 Op. Att’y Gen. 3464, p. 971 (syllabus, paragraph two) (“[t]here is no statutory designation of what constitutes full-time employment for county employees within the purview of [R.C. 325.19], and, in the absence of such designation, a full-time employee is a person who regularly works all of the working hours required by the employer as normal working hours for his employee”). A person thus is employed as a “full-time” law enforcement officer for purposes of R.C. 311.01(B)(8)(b) when the person’s work as a law enforcement officer takes all of his regular working hours. See 1986 Op. Att’y Gen. No. 86-077 at 2-428.

Attached to Respondent’s Answer are several documents that prove absolutely nothing when it comes to Respondent’s work history and satisfying the statute relative to full-time police work. Respondent goes to great lengths to explain that a reserve/special deputy is a law enforcement official qualified under Ohio law. The question is not whether Respondent remained in a law enforcement capacity, although minimal but whether he performed work as a

full-time police officer in a supervisory capacity at corporal or above. His qualifications do not comport with the law. The documents attached to Respondent's Motion establish at face value that Respondent did not perform full-time police work during the period of November 1, 2007 through December 2011 (the operative period). The period of time is nearly 1,500 days but Respondent asserts that having his signature on a range firing document constitutes his compliance with both Sections of R.C. 311.01(B)(8) and (B)(9). The documents are signed allegedly by Respondent but they do not establish whether Respondent spent on minute, one hour or whether he was indeed present during the actual firing.

Additionally, the documents do not contain the signature of a corporal or above as required by R.C. 311.01(B)(9) herein. Respondent argues that his alleged work as a range officer qualifies him as a corporal or above. Quite simply, Respondent retired on October 31, 2007 and he cannot use his prior status as a major to meet the statutory requirements of R.C. 311.01 et al. as subject requirements are a condition precedent to occupying the office of sheriff in the State of Ohio.

The documents submitted to the Board of Election by Respondent in the Fall of 2011 further establish that there exists no disputed issue of fact concerning Respondent's failure to meet the qualifications of R.C. 311.01(B)(8) and (B)(9). (See attached at Exhibit 3.) The documents show that Respondent was only a reserve officer from his retirement on October 31, 2007 through his filing his candidacy in the Fall of 2011. The documents at Exhibit 3 conclusively establish that Respondent did not perform full-time police officer duties and responsibilities as a corporal or above or Respondent would have so specifically listed such experience and qualification. Moreover, the exact document appointing Respondent subsequently has the block checked special and not the block full-time. (See Notice of Peace

Officer Appointment/Termination at Exhibit 3, page 1-3.) Furthermore, the only document offered as payment for full-time police work (See Exhibit D) is a payment for consultant work as Belmont County does not pay its full-time employees by warrant.

(iv) *Respondent was not truthful in preparing his application for sheriff.*

Respondent now admits that he has a house in Florida that he now characterizes as a vacation home. Nevertheless, Respondent should have listed said residence in Florida as the instructions said to list all residences which would include his characterization of a vacation home in Florida. (See Application for Candidacy of Sheriff of Belmont County Ohio at Exhibit 3, page 3.) Bottom line is that Respondent has a home in Florida and Respondent should have so listed before he was caught misrepresenting his qualifications thus requiring the action in quo warranto.

B. *Respondent's qualification or lack thereof cannot be waived as R.C. 311.01 is a mandatory statute.*

The Board of Election has effectively refused to do its job although being on repeated notice of Respondent's lack of qualification concerning full-time police work and supervisory experience. The Board permitted an unqualified candidate to run for office and the Belmont County Board of Election cannot waive the mandatory qualification of R.C. 311.01 et al. Pursuant to R.C. 311.01(F)(2), a county board of election is required to certify whether or not a candidate for the office of sheriff who has filed a declaration of candidacy, a statement of candidacy or a declaration of intent to be a write-in candidate meets the qualifications specified in R.C. 311.01(B). The Board, although in violation of its statutory responsibility to assure only qualified candidates are elected, cannot blame Relator. Relator did everything he could by filing protests, challenges, request for open records once it became clear to Relator that Respondent did not meet the statutory requirement of R.C. 311.01(B)(8) and (B)(9). Thereafter, Relator did what

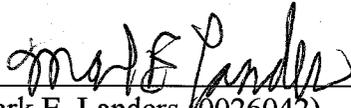
he had to do and that was to file an action in quo warranto once Relator occupied the office of Sheriff of Belmont County.

Respondent, in his continued attempt to illegally occupy the office of Sheriff, asserts that Relator should have filed an action in prohibition and/or mandamus. Relator was not required to investigate the propriety of the Belmont County Board of Election relative to what, if any, investigation the Belmont County Board of Election conducted relative to Respondent herein. However, it is clear that Respondent himself knew that his qualifications were contested by Sheriff Thompson in December 2011 and therefore, Respondent could have asked the Belmont County Board of Election to investigate the propriety of his qualifications in reference to R.C. 311.01(B)(8) and (9).

Laches nor any other legal excuse provides a remedy to Respondent herein. Respondent is not excused from possessing the requisite qualifications to serve as Sheriff and any prejudiced suffered by Respondent is the direct and proximate cause of Respondent's fake assertion of his qualifications. Indeed, Respondent now attempts to assert that relator and respondent had a conversation relative to Sheriff's Thompson protest in 2012 as to which relator denies in its entirety any such conversation ever taking place,(see exhibit 4 herein).Respondent in his desperation to continue his ruse upon the Belmont county taxpayers makes subject assertions in his attempt to put forward a laches defense .Nevertheless ,relator promptly filed an action in "Quo Warranto" before this Honorable Court and the facts herein so establish conclusively(see ,Exhibits 1-4 herein)

WHEREFORE, this Court is requested to issue a writ of quo warranto and remove Respondent from Sheriff of Belmont County in a prompt and expeditious manner as justice so requires.

Respectfully submitted,

By 
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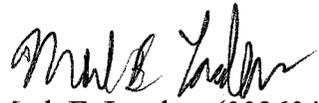
CERTIFICATE OF SERVICE

Service of the foregoing RELATOR'S RESPONSE TO RESPONDENT'S MOTION FOR JUDGMENT ON THE PLEADINGS was had upon counsel for the Respondent by mailing a true and correct copy thereof by U. S. mail, postage prepaid, this 13 day of May, 2013, to:

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By 



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Counsel for Relator, Dick Flanagan

Exhibit 1

IN THE OHIO SUPREME COURT

STATE, EX REL. DICK FLANAGAN	*	CASE NO.
62769 Riggs Road	*	
Bellaire, Ohio 43906,	*	
	*	
Relator,	*	
	*	
v.	*	
	*	
DAVID M. LUCAS	*	
69396 Williams Road	*	
St. Clairesville, Ohio 43950,	*	
	*	
Respondent.	*	
	*	

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.

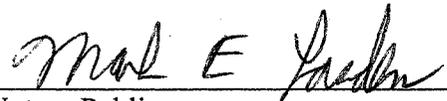
13. Respondent David M. Lucas, based on information and belief, has lived in Florida for a significant period of time from October 31, 2007 through present as evident by virtue of his personal residence at 4673 Sines Lane, Charlotte County, Florida, 33981. Respondent David M. Lucas's wife is presently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

Exhibit 2

IN THE OHIO SUPREME COURT

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

CASE NO. 13-0239

Relator,

v.

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

Respondent.

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traceylloyd@comcast.net

Counsel for Respondent, David M. Lucas

STATE OF OHIO)
)
COUNTY OF BELMONT) SS:

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

1. I never saw the complaint filed by former Sheriff Fred Thompson until on or about the first week of December 2012 after the receipt of documents obtained from the Belmont County Board of Elections in response to an open records request. Sheriff Thompson's protest and other documents were produced as the documents related to the alleged qualifications of Dave Lucas.

2. I and others began a prompt protest to the Belmont County Board of Elections and to the Ohio Secretary of State concerning qualifications of Dave Lucas, Respondent herein. I specifically requested that the Board of Elections perform their statutory responsibilities pursuant to R.C 3501.11 (J) and (K) but to date they have done nothing.

3. The prosecuting attorney was asked to investigate and file an action in Quo Warranto but said Prosecutor refused both requests. I asked for the Secretary of State to intervene but to date said office has done nothing to my knowledge.

4. Open records requests were filed with the Belmont County sheriff's office to ascertain any and all documents that established any full time police work that Respondent Dave Lucas performed from the period of his retirement, October 31, 2007 through December 7, 2011. Said records were produced on or about February 3, 2013 which indicated no documentation of full time police work or any documentation of working as a sergeant or above as required by R.C. 311.01(B)(8) and (B)(9) respectively.

5. I am not a classified employee nor is my salary paid through federal dollars. The Hatch Act and R.C.124.57 have been complied with in all relevant areas.

6. The auditor of Belmont County has certified and stated that Respondent Dave Lucas was not paid any money for any service subsequent to Respondent's retirement on October 31, 2007. Any range training or certification was performed in a volunteer capacity as evident by lack of payment thereof.

7. Sheriff Fred Thompson has stated that Respondent Dave Lucas performed no functions as a reserve officer at any time from his retirement from October 31, 2007 through December 7, 2011.

8. Respondent Dave Lucas relatives, Sheriff Fred Thompson and other persons of knowledge informed Relator Dick Flanagan of the non-listed house owned by Dave Lucas in Florida which he now admits he did not list on his paperwork for sheriff.

9. Respondent Dave Lucas does not get to use his prior status as a Major because at all times he continued in a retirement status until recently occupying the position of sheriff.

10. I became a full time police officer in 1995 and served with the Bridgeport and the Martins Ferry Police Departments until I became a full time police officer with Bellaire on April 1, 2000.

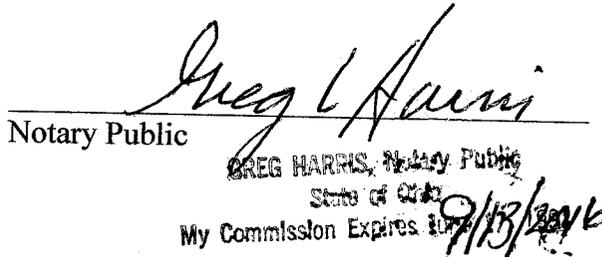
11. I have continuously served with the Bellaire Police Department since I was promoted to Lieutenant on November 28, 2005 and have continuously served in said supervisory position to date.

12. I meet all requirements of R.C 311.01 et al to include the full time law enforcement requirement and supervisory experience requirement as mandated by R C.311.01 B(8) and (9) respectively.

FURTHER AFFIANT SAYETH NAUGHT.


Dick Flanagan

Sworn to before me and subscribed in my presence this 6 day of MARCH, 2013.


Notary Public
GREG HARRIS, Notary Public
State of Ohio
My Commission Expires 9/13/2016

*Exhibit 3 Contents of Qualification & Protest as provided
BY BELMONT COUNTY Board of Elections*

Sheriff Fred A. Thompson

68137 HAMMOND ROAD
ST. CLAIRSVILLE, OH 43950-8755



BELMONT COUNTY, OHIO

EMERGENCY: 911

DISPATCHER
(740) 695-2212
(740) 695-7933
Fax: (740) 695-9662

CIVIL OFFICE
(740) 695-2121 ext. 109
(740) 425-1118 ext. 109
(740) 795-4030 ext. 109

JAIL
(740) 695-5124
Fax: (740) 695-4781

October 6, 2011

Honorable Judge Jennifer Sargus
Common Pleas Court
101 West Main Street
St. Clairsville, Ohio 43950

Re: Certification of David M. Lucas

Dear Judge Sargus,

This letter is to verify the work history of Dave Lucas. He served as a Part Time Police Officer with the Barnesville Police Department from October of 1978 to February of 1981. He then became a Full Time Deputy with the Belmont County Sheriff's Office on August 12, 1981. He was promoted to Sergeant in January of 1985 with his last promotion as Major on August 5, 2007. He retired as a Full Time Deputy on October 31, 2007 and currently remains as a Commissioned Special Deputy.

I have also attached a copy of his Ohio Peace Officer Training Academy paperwork to verify his appointment history.

Thank you for your time and attention in this matter. Should you have questions please do not hesitate to contact me at 740-695-7933 extension 116.

Sincerely,

A handwritten signature in cursive script that reads "Jill Kernik".
Jill Kernik
Administrative Secretary

W/Enclosures

IN THE COURT OF COMMON PLEAS OF BELMONT COUNTY, OHIO

IN THE MATTER OF THE
CANDIDACY OF

JOURNAL ENTRY
RE: APPLICATION FOR CANDIDACY
OF SHERIFF OF BELMONT COUNTY,
OHIO

David M. Lucas
(APPLICANT'S NAME)

A verified application has been filed by David M. Lucas, a prospective candidate for the Office of Sheriff of Belmont County, Ohio. The Court, for purposes of carrying out its duties pursuant to R.C. 311.01 makes the following orders.

IT IS ORDERED THAT:

- (1) David M. Lucas shall present himself or herself to the Identification Bureau of the Belmont County Sheriff's Department to be fingerprinted in accordance with R.C. 311.01, during regular business hours on a date and time determined by the Sheriff's Department, but in no event later than five (5) business days after this Order.
- (2) The Identification Bureau of the Belmont County Sheriff's Department shall take three (3) sets of fingerprints of the prospective candidate as follows:
 - (a) One (1) set of fingerprints shall be taken on an Ohio Bureau of Criminal Identification and Investigation Applicant Card (BCI card), which shall be clearly marked "LAW ENFORCEMENT APPLICANT".
 - (b) One (1) set of fingerprints shall be taken on a Federal Bureau of Investigation Applicant Card (FBI card) which shall be clearly marked "LAW ENFORCEMENT APPLICANT".
 - (c) One (1) set of fingerprints shall be taken on a local law enforcement fingerprint card as recognized and utilized by the Belmont County Sheriff's Department (BCSD card) and shall be clearly marked "LAW ENFORCEMENT APPLICANT".

- (3) Upon completion of the fingerprinting, the BCI card and the FBI card shall be delivered by the officer taking said fingerprints to the Administrative Judge of the Common Pleas Court of Belmont County for forwarding to the appropriate agencies and the BCSD card shall be retained by the Belmont County Sheriff's Department for purposes of a record check of all local law enforcement agencies, which shall be conducted forthwith.
- (4) Upon completion of the local records check the Sheriff or his designee shall deliver the results of the local record check to the Administrative Judge of the Common Pleas Court of Belmont County, Ohio.

DATED:



Administrative Judge

IN THE COURT OF COMMON PLEAS OF BELMONT COUNTY, OHIO

IN THE MATTER OF THE
CANDIDACY OF :

David M. Lucas
(APPLICANT'S NAME)

: JOURNAL ENTRY
: RE: APPLICATION FOR CANDIDACY
OF SHERIFF OF BELMONT COUNTY,
OHIO

Pursuant to R.C. 311.01, the Court makes the following findings regarding the applicant's eligibility as a candidate for the Office of Sheriff of Belmont County, Ohio:

- (1) Applicant is a United States citizen;
- (2) Applicant has been a resident of Belmont County, Ohio for not less than one (1) year prior to the qualification date for this election;
- (3) Applicant is qualified as an elector of Belmont County, Ohio pursuant to R.C. 3503.01;
- (4) Applicant has attained a high school diploma or a recognized equivalent;
- (5) Applicant has not been convicted of or pleaded guilty to a felony or any offense involving moral turpitude under the laws of this state or any other state or the United States, and has not been convicted of or pleaded guilty to an offense that is a misdemeanor of the first degree under the laws of this state or an offense under the laws of this state or an offense under the laws of any other state or the United States that carries a penalty that is substantially equivalent to the penalty for a misdemeanor of the first degree under the laws of this State;
- (6) Applicant has the law enforcement experience required pursuant to the R.C. 311.01(9).

IT IS THEREFORE THE FINDING that David M. Lucas is eligible to be a candidate for the Office of Sheriff of Belmont County, Ohio.

It is therefore ORDERED that the Clerk forward a certified copy of these findings and the verified application, to the Board of Elections of Belmont County, Ohio forthwith.

ALL INFORMATION MUST BE TYPED OR PRINTED IN INK.

APPLICANT INFORMATION:

1. Name David M. Lucas
2. Address 69396 Williams Road
St. Clairsville, Ohio 43950
3. Soc. Sec. No. [REDACTED]
4. Birthdate 07/24/1959

ELIGIBILITY INFORMATION:

Ohio Revised Code, Section 311.01 mandates that an individual meet all the following qualifications to be eligible as a candidate for the Office of County Sheriff.

Applicant hereby states that he or she:

- (1) Is a United States citizen;
- (2) Has been a resident of Belmont County, Ohio for not less than one (1) year prior to the qualification date for this election;
- (3) Is qualified as an elector of Belmont County, Ohio, pursuant to R.C. 3503.01.
- (4) Has attained a high school diploma or a recognized equivalent;
- (5) Has not been convicted of or pleaded guilty to a felony or any offense involving moral turpitude under the laws of this or any other state or the United States, and has not been convicted of or pleaded guilty to an offense that is a misdemeanor of the first degree under the laws of this state or an offense under the laws of any other state or the United States that carries a penalty that is substantially equivalent to the penalty for a misdemeanor of the first degree under the laws of this state.
- (6) Has the law enforcement certificate required by R.C. 311.01 (B) (8), and the law enforcement experience required by R.C. 311.01 (B) (9).

APPLICATION FOR CANDIDACY

RESIDENCE HISTORY:

List every home address you have had in the six (6) years prior to the qualification date. (Attach additional sheets on 8 1/2 x 11 white paper if necessary.)

Address	Period of Residence
<u>69396 Williams Rd., St. Clairsville, Ohio</u>	From <u>1998</u> to <u>Present</u>
<u>116 Franklin St., St. Clairsville, Ohio</u>	From <u>1991</u> to <u>1998</u>
_____	From _____ to _____
_____	From _____ to _____
_____	From _____ to _____

EMPLOYMENT HISTORY:

State the name and address of each employer and the period of time employed by that employer for a period of six (6) years immediately preceding the qualification date. (Attach additional sheets on 8 1/2 x 11 white paper if necessary.)

Name and Address of Employer or Business	Period of Employment
<u>Belmont County Sheriff's Office (Full Time)</u>	From <u>1981</u> to <u>2007</u>
<u>Belmont County Sheriff's Office (Reserve)</u>	<u>2007</u> Present
<u>Pyrotechnics by Presutti, Inc.</u>	From <u>2000</u> to <u>Present</u>
_____	From _____ to _____



NOTICE OF PEACE OFFICER APPOINTMENT/TERMINATION (mark appropriate box)

Appointment Appointment Status Change (e.g., reserve to full/parttime) Termination Correction to Record - highlight correction(s)

Personal Information Disclosure Statement - Pursuant to the Federal Privacy Act (Public Law 93-579), notice is hereby given for the request of personal information. The Ohio Peace Officer Training Commission and Academy require personal information for the purpose of accurately recording training, agency/school affiliation, and testing information. Your Social Security Number will not be disclosed to individuals or agencies except in accordance with state and federal law and policy of the Ohio Peace Officer Training Commission and the Office of the Attorney General of the State of Ohio. Failure to provide any of the requested information may result in an incomplete training record and certain services may be delayed.

INSTRUCTIONS

- Completion of this Notice form is required within 10 days of appointment or termination for all peace officers as defined in ORC 109.71(A).
- Use this Notice to report new appointments, appointment status changes, corrections (including name changes), and terminations.
- Sections A, B, and E must be completed, then complete Section C and pages 2 and 3 or Section D as appropriate.
- Please type or legibly print (in ink) all required information.
- Mail or fax this Notice to OPOTC at the below address within 10 days of such actions, as required by Ohio Revised Code 109.761.

A. OFFICER INFORMATION			
1. SOCIAL SECURITY NUMBER [REDACTED]	2. NAME (Last) (First) (Middle) LUCAS DAVID M.	3. BIRTHDATE (mm/dd/yyyy) 07/24/1959	
4. GENDER <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	5. ALIAS (Last) (First) (Middle)	6. HOME PHONE NUMBER 740 695-0519	
7. DRIVER'S LICENSE # RF211297	8. HOME STREET/MAILING ADDRESS (#/Street/PO Box) (City) (County Name) (State) (Zip Code) 69396 WILLIAMS ROAD ST. CLAIRSVILLE BELMONT OHIO 43950		

B. AGENCY INFORMATION		
9. AGENCY NAME BELMONT COUNTY SHERIFF'S OFFICE	10. APPOINTING AUTHORITY'S NAME & TITLE FRED A. THOMPSON, SHERIFF	11. AGENCY PHONE NUMBER 740 695-7933
12. AGENCY STREET/MAILING ADDRESS (#/Street/PO Box) (City) (County Name) (State) (Zip Code) 68137 HAMMOND ROAD ST. CLAIRSVILLE BELMONT OHIO 43950		

C. APPOINTMENT INFORMATION			
13. APPOINTMENT DATE (mm/dd/yyyy) 10/31/2007	14. CURRENT RANK DEPUTY SHERIFF	15. TITLE/POSITION DEPUTY SHERIFF	16. ORC SECTION 311.04
17. APPOINTMENT STATUS (mark appropriate box) <input type="checkbox"/> Full Time <input type="checkbox"/> Part Time <input type="checkbox"/> Auxiliary <input type="checkbox"/> Reserve <input checked="" type="checkbox"/> Special		18. APPOINTEE'S FIRST PEACE OFFICER APPOINTMENT? <input type="checkbox"/> yes (Complete all of page 2) <input checked="" type="checkbox"/> no (Complete pages 2 and 3 - an update evaluation will occur)	

D. TERMINATION INFORMATION	
19. TERMINATION DATE (mm/dd/yyyy)	20. REASON FOR TERMINATION (mark appropriate box) <input type="checkbox"/> Resigned <input type="checkbox"/> Discharged <input type="checkbox"/> Retired <input type="checkbox"/> Deceased <input type="checkbox"/> Felony Conviction <input type="checkbox"/> Other

E. ATTESTATION OF REPORTING OFFICIAL		
I attest that the information provided on this form is true and correct and is based on my personal knowledge or inquiry. The personnel records of this agency substantiate the information on this form.		
SIGNATURE OF REPORTING OFFICIAL <i>Fred A. Thompson</i>	NAME & TITLE OF REPORTING OFFICIAL (Typed or Printed Legibly) FRED A. THOMPSON, SHERIFF	DATE 11/07/2007

PEACE OFFICER APPOINTMENT AND OATH OF OFFICE*

If first appointment: SCHOOL NAME _____

SCHOOL # _____

I. TO BE COMPLETED BY APPOINTEE AND APPOINTING AUTHORITY:

On this date, you are hereby appointed as a peace officer to serve as a DEPUTY SHERIFF
for the BELMONT COUNTY SHERIFF'S OFFICE pursuant to 311.04
department name position/title
ORC Section

As such, you shall swear or affirm the following:

I, DAVID M. LUCAS, do solemnly swear or affirm that I will support the
appointee's printed name

Constitution and Laws of the United States of America, the Constitution and Laws of the State of Ohio,
and the Laws and Ordinances of Belmont and to the
political subdivision

best of my ability will discharge the duties of the office of DEPUTY SHERIFF.
position/title

[Signature]
Signature of Appointee

10/31/2007
Date of Appointment (mm/dd/yyyy)

II. TO BE COMPLETED BY APPOINTING AUTHORITY:

By signing below, I hereby swear or affirm that the above named individual is appointed to the
above position pursuant to the authority vested in me by 311.04, and
ORC Section

that the individual has personally appeared before me and signed this oath in my presence.

[Signature]
Signature of Appointing Authority

FRED A. THOMPSON, SHERIFF
Typed/Printed Name of Appointing Authority and Title

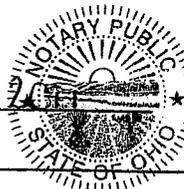
NOTARY:

Sworn to and subscribed before me this 17th day of November, 2007

in the county of Belmont and the state of Ohio.

[Signature]
Signature of Notary/Attorney/Clerk of Courts

My commission expires 1-8-2011



Affix seal here
JILL A. KERVIN
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES
8 DAY OF Jan, 2011

* If you submit a department oath of office, the document must include the officer's name, date of appointment, ORC section under which you are appointed and the signature and title of the appointing authority (mayor, safety director, chief of police, etc.) as listed in the ORC section under which you are appointed.

OHIO PEACE OFFICER APPOINTMENT HISTORY

OFFICER'S NAME DAVID M. LUCAS SSN: 279-64-6994

BASIC TRAINING SCHOOL NAME _____ From: _____ To: _____
Beginning Date Ending Date

1. Appointed by:	<u>BARNESVILLE POLICE DEPARTMENT</u>	<u>BELMONT</u>
	<small>Agency Name</small>	<small>County Name</small>
From:	<u>10/1978</u>	To: <u>02/1981</u>
	<small>Month/Date/Year</small>	<small>Month/Date/Year</small>
Position title:	<u>POLICE OFFICER</u>	
	<small>(Deputy, Reserve Officer, Etc.)</small>	
Appointment status:	<input type="checkbox"/> Full-Time <input checked="" type="checkbox"/> Part-Time <input type="checkbox"/> Auxiliary <input type="checkbox"/> Reserve <input type="checkbox"/> Special	
2. Appointed by:	<u>BELMONT COUTNY SHERIFF'S OFFICE</u>	<u>BELMONT</u>
	<small>Agency Name</small>	<small>County Name</small>
From:	<u>08/12/1981</u>	To: <u>10/31/2007</u>
	<small>Month/Date/Year</small>	<small>Month/Date/Year</small>
Position title:	<u>DEPUTY SHERIFF</u>	
	<small>(Deputy, Reserve Officer, Etc.)</small>	
Appointment status:	<input checked="" type="checkbox"/> Full-Time <input type="checkbox"/> Part-Time <input type="checkbox"/> Auxiliary <input type="checkbox"/> Reserve <input type="checkbox"/> Special	
3. Appointed by:	<u>BELMONT COUTNY SHERIFF'S OFFICE</u>	<u>BELMONT</u>
	<small>Agency Name</small>	<small>County Name</small>
From:	<u>10/31/2007</u>	To: <u>PRESENT</u>
	<small>Month/Date/Year</small>	<small>Month/Date/Year</small>
Position title:	<u>DEPUTY SHERIFF</u>	
	<small>(Deputy, Reserve Officer, Etc.)</small>	
Appointment status:	<input type="checkbox"/> Full-Time <input type="checkbox"/> Part-Time <input type="checkbox"/> Auxiliary <input type="checkbox"/> Reserve <input checked="" type="checkbox"/> Special	
4. Appointed by:	_____	_____
	<small>Agency Name</small>	<small>County Name</small>
From:	_____	To: _____
	<small>Month/Date/Year</small>	<small>Month/Date/Year</small>
Position title:	_____	
	<small>(Deputy, Reserve Officer, Etc.)</small>	
Appointment status:	<input type="checkbox"/> Full-Time <input type="checkbox"/> Part-Time <input type="checkbox"/> Auxiliary <input type="checkbox"/> Reserve <input type="checkbox"/> Special	

5. THIS SECTION TO BE COMPLETED BY THE OFFICER AND AN AGENCY OFFICIAL IN THE PRESENCE OF A NOTARY PUBLIC/ATTORNEY/ CLERK OF COURTS.

This is to certify that we understand that the above information will be used to determine whether the officer requires any mandated/update training and that the information set forth in this form is true and accurate to the best of our knowledge. All requested information has been researched for accuracy and, where applicable or necessary, documentation has been attached for purposes of verification and/or explanation. It is understood that, should any of the provided information be discovered inaccurate, it will void the determination made from this request. Further, it is also understood that submission of false information submitted to a governmental organization in pursuit of certification is a violation of section 2921.13 of the Ohio Revised Code.

[Signature]
 Signature of individual officer

[Signature]
 Signature of requesting official

FRED A. THOMPSON
 Typed name of requesting official

BELMONT COUNTY SHERIFF'S OFFICE
 Name of requesting agency

68137 HAMMOND ROAD
 Mailing address of requesting agency

ST. CLAIRSVILLE, OHIO 43950
 Mailing address (continued)

Sworn to and subscribed before me this 7th day of November, 2007

in the county of Belmont and the state of Ohio.

[Signature] My commission expires 1-8-2011



Affix seal here
JILL A. KERNIK
 NOTARY PUBLIC, STATE OF OHIO
 MY COMMISSION EXPIRES
8 DAY OF Jan, 2011

Exhibit 4

IN THE SUPREME COURT OF OHIO

The State, ex rel. Dick Flanagan

*** Original Action in Quo Warranto**

Relator,

*** Case No. 13-0239**

v.

David M. Lucas

Respondent.

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*
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*
*

AFFIDAVIT OF DICK FLANAGAN

Mark E. Landers (0026042)
2071 Aspen Ridge
Dayton, OH 45459
Phone: (937) 609-5783
Email: mark.landlers.esq@gmail.com
Counsel for Relator Dick Flanagan

Christopher J. Gagin (0062820)
Of Counsel
Tracey Lancione Lloyd (0046702)
Lancione, Lloyd and Hoffman Law Office Co., L.P.A.
3800 Jefferson Street, Suite 101
Bellaire, Ohio 43906
Phone: (740) 676-2034
Fax: (740) 676-3931
chris.gagin@gaginlegal.com
traceylloyd@comcast.net

Counsel for Respondent, David M. Lucas

STATE OF OHIO)
)
) SS:
)
COUNTY OF BELMONT)

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

1. David M. Lucas did not perform any full-time police work within the Belmont County Sheriff's Department at any time subsequent to his retirement in October 2007 through calendar year 2012.

2. David M. Lucas was a paid consultant on a one-time basis in 2010 as David M. Lucas was issued a check for \$595. Consultants/Independent Contractors paid by the Auditor's office in Belmont County are not employees of the Belmont County Sheriff's office.

3. David M. Lucas did not act as a corporal or above at any time subsequent to his October 31, 2007 retirement in a supervisory capacity as required by O.R.C. 311.01(B)(9) as a condition precedent to occupying the office of Sheriff.

4. David M. Lucas did not provide any substantiated documentation that David M. Lucas performed any full-time police work that met or exceeded a normal eight hour day from October 31, 2007 through calendar year 2012.

5. David M. Lucas himself admits that he and his wife travelled to Florida from June 30, 2010 through December 2011 thus establishing a false statement that David M. Lucas was subject to deployment with Special Operations Branch 24 hours, 7 days a week, and 365 days a year from 2007 through 2012.

6. Belmont County Sheriff's office has no written records of David M. Lucas being deployed within the Special Operations Branch as verified by former Sheriff Fred Thompson at any time subsequent to David M. Lucas' retirement.

7. Belmont County Board of Elections conducted no investigation of David M. Lucas' qualifications notwithstanding protests by former Sheriff Thompson, Gary Landers and Relator. In fact, Belmont County Board of Elections has so admitted said fact.

8. I never had a discussion with David M. Lucas concerning Sheriff Thompson's protest/challenge at any time to include February 2, 2012 as I was not aware of said specific assertion by Sheriff Thompson until December 2012. Additionally, I had no discussion with David M. Lucas about his qualifications or lack thereof but through my undersigned attorney.

9. The Village of Bellaire, pursuant to open records request, provided documentation to David M. Lucas's attorney that the Village of Bellaire is not subject to state civil service statutes and Relator Flanagan's salary was not paid with federal funds.

10. Sergeant Tom DeVaul was the firearms instructor in charge of re-qualifications at all times since David M. Lucas retired through the term of Sheriff Thompson. David M. Lucas was paid one time as an independent contractor and not as a member of the Sheriff's Office as exemplified in Exhibit D to Respondent's Motion for Judgment on the Pleadings

FURTHER AFFIANT SAYETH NAUGHT.

Dick Flanagan
Dick Flanagan

Sworn to before me and subscribed in my presence this 13 day of MAY, 2013.

Pamela J Eden
Notary

