

IN THE SUPREME COURT OF OHIO

STATE OF OHIO  
ex rel. PLUNDERBUND MEDIA, LLC

CASE NUMBER 2013-0596

Relator

V.

AN ORIGINAL ACTION

JOHN BORN  
DIRECTOR, OHIO DEPARTMENT OF PUBLIC SAFETY  
(Successor to Thomas Charles)

Respondent

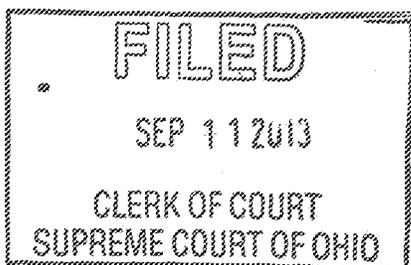
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RELATOR'S MOTION TO STRIKE AFFIDAVITS

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**RELATOR'S MOTION TO STRIKE**

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This case concerns the statutory interpretation of R.C. 149.433, in light of its language and this Court's decisions with regard to R.C. 149 et seq. and other public documents requirements. It also involves interpretation of the United States Patriot Act, specifically 42 USC 5195c, the Critical Infrastructure Protection Act. This Act is the source of R.C. 149.433 and must be read in *pari materia*. Testimony, beyond the request and denial of the public documents request and state policy documents, has little relevance to the determination of this case.

Although Director Born and the Highway Patrol officers who gave affidavits here may have some expertise in administration of Patriot Act issues at the state level, they completely and totally failed to convey this in their affidavits which largely consist of unsupported opinions. They are transparently arguing that this governor deserves an exception from long standing rules and interpretations of R.C. 149.43. These affidavits are not evidence, but largely opinion, hearsay and legal argument without factual foundation that should not be accepted in a situation where there is no opportunity for cross examination.

Relator included in its evidence submission short statements for the convenience of this Court simply addressing the evidentiary issue of relevance of two documents. There is nothing in the Supreme Court Rules that forbid such a short statement grounded in the rules of evidence. Despite this, the Department files a disingenuous Motion to Strike arguing that this constitutes argument, while submitting "affidavits" that are devoid of relevant or admissible evidence. They pepper these with references to domestic terrorism to make it sound really important and frightening. But they are hiding whether there are any threats at all. This could all be fabricated.

All the Highway Patrol affidavits should therefore be struck in their entirety as irrelevant and based entirely on opinions without any introduction of foundational evidence. In the alternative, the following specific sections should be stricken as set forth below:

**I. Affidavit of Director Born.**

Beyond the statements of his credentials, there is no testimony in Director Born's affidavit. Paragraph 8 states that revealing the number of threatening letters or phone calls received by the governor reveals security information. There is no evidence supporting this statement and it makes no sense. (See RIMS print out, Relator's Ex. 2) Paragraphs 9 is nothing but thinly veiled legal arguments that do not belong in an affidavit. Paragraph 10 is blatantly a legal argument that has no place in an affidavit. Paragraph 11 is bald opinion, without any factual foundation whatsoever, even a hypothetical situation.

**II. Affidavit of Paul Pride.**

Other than recitation of credentials, this affidavit is also unsupported opinion and legal argument. Specifically, paragraph 7 is legal argument about what the term "office" means which is inappropriate in an affidavit. Paragraph 8 discusses the fact this governor lives in his own house. This should be stricken as irrelevant as this has no bearing whatsoever on whether this material is provided pursuant to R.C. 149.43. Paragraph 9 is a disturbing argument against freedom of the press. It also contains a statement that there is lots of terrorism around, but there is no indication that there is any in Ohio at all.

Paragraph 10 is legal argument, but it is not remotely related to this case. Here Pride argues that if what the governor does on a daily basis is revealed, life and limb are at risk. Aside from the fact that press releases constantly provide this information to the public, this public document request has nothing to do with that. Relator has not requested that material.

Paragraph 11 is not relevant to this case and is again an argument that this current governor, because he wrote a couple of books and was on cable news 6 years ago should be treated differently and have his own set of rules. This is not appropriate in an affidavit. There is absolutely no factual support that Karen Kasich has ever had much media coverage at all, let alone more than other women married to any governor. All this material is hearsay. The Highway Patrol has provided no factual support at all for this part of this statement and it should be stricken based on lack of foundation.

Richard Baron's affidavit is by far the most interesting affidavit. Unfortunately, parts of it render it so lacking in credibility that that alone is grounds to strike it in its entirety. Paragraphs 15-19 is a bald pseudo legal argument that the word office means a person. The term in the Revised Code, including 2921. et seq., those sections on corruption that Baron is an alleged expert, is "public official" not office. Further, any information about government corruption investigations is irrelevant to this public documents request. Paragraph 14 is a case citation and some hearsay about a private company that is completely irrelevant to this case and not something belonging in an affidavit.

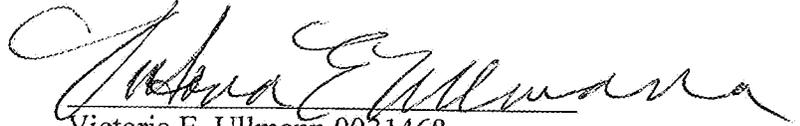
Most of this affidavit is lots of stuff trying to sound scary about terrorists. But the irrefutable fact of this case is that there is no factual showing whatsoever in this case that a single threat has been made. There is no showing that any of these threats could properly be considered terrorism, because not every threat will be a terrorist threat. Our Ohio terrorist, Nuhandi Abdi, threatened a shopping mall not the government. The fact that some 9/11 terrorists flew near Cleveland does not mean Ohio is a hotbed of terrorist activity. This material is irrelevant to this case.

Paragraphs 6-8 in Patrick Kellum's affidavit are obvious hearsay and opinion that John Kasich is the most important politician in the history of Ohio. It is essentially the governor's resume and therefore entirely hearsay. Some of the opinions are also without foundation in factual material. The comparison to past governors is without any foundation, and again sounds like what the governor would say about himself. Paragraph 9 has no bearing on this case. The balance of this affidavit provides some information about investigative techniques that are only remotely relevant.

This affidavit is questionable in its entirety due to the hearsay material that appears to be coming from the governor. Although somewhat beyond the consideration of a motion to strike, this material also lacks credibility. Governor Strickland campaigned with both President Obama as a candidate and Hillary Clinton as a candidate while governor and this would be much more likely to place someone in the cross hairs of terrorists than being on cable news on Saturday night 6 years ago. Governor Strickland also kept his office on the first floor of the Statehouse, right inside the door, whereas Governor Kasich tucks himself away on the 30<sup>th</sup> Floor of the Riffe. It is kind of obvious that Strickland was a greater security concern by far.

Wherefore, relator moves this Court to strike the affidavits from the Highway Patrol in their entirety or selected portions as the Court sees fit.

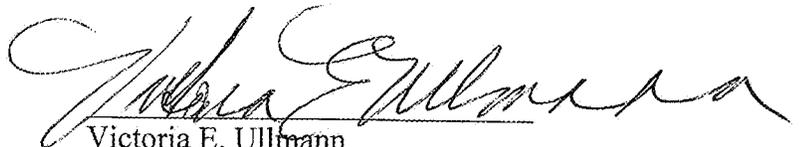
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served upon counsel for the Department of Public Safety by email on date of filing.



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Attorney at law