

ORIGINAL

IN THE SUPREME COURT OF OHIO

State ex rel. Plunderbund Media, LLC,	:	Case No. 2013-0596
	:	
Relator,	:	Original Action in Mandamus
	:	
v.	:	
	:	
John Born, Director,	:	
Ohio Department of Public Safety,	:	
	:	
Respondent.	:	

MOTION OF RESPONDENT FOR ORAL ARGUMENT

MICHAEL DeWINE  
Ohio Attorney General

VICTORIA E. ULLMANN\* (0031468)  
*\*Counsel of Record*  
1135 Bryden Road  
Columbus, Ohio 43205  
614-253-2692  
Victoria\_ullmann@hotmail.com

Counsel for Relator

HILARY R. DAMASER\* (0059190)  
*\*Counsel of Record*  
WILLIAM J. COLE (0067778)  
Assistant Attorneys General  
Executive Agencies Section  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215  
614-466-2980  
866-354-4086 fax  
Hilary.Damaser@OhioAttorneyGeneral.gov  
William.Cole@OhioAttorneyGeneral.gov

Counsel for Respondent

JENNIFER M. ATZENBERGER (0072114)  
JAMES L. HARDIMAN (0031043)  
DREW S. DENNIS (0089752)  
American Civil Liberties Union of Ohio  
Foundation  
4506 Chester Avenue  
Cleveland, Ohio 44103  
216-472-2220  
jatzenberger@acluohio.org  
jhardiman@acluohio.org  
ddennis@acluohio.org

Counsel for Amicus Curiae

FILED
OCT 23 2013
CLERK OF COURT SUPREME COURT OF OHIO

Pursuant to S.Ct.Prac.R.17.02(B), Respondent Director of the Ohio Department of Public Safety (“the Department”) moves this Court to schedule this case for oral argument. For cases in which oral argument is not mandatory (such as this original action), the Court has discretion to grant oral argument, and “in exercising this discretion, [this Court] consider[s] whether the case involves a matter of great public importance, complex issues of law or fact, a substantial constitutional issue, or a conflict among courts of appeals.” *State ex rel. Davis v. Pub. Emps. Retirement Bd.*, 111 Ohio St.3d 118, 2006-Ohio-5339, 855 N.E.2d 444, ¶ 15.

This case meets three of the above criteria, any one of which alone warrants scheduling oral argument. First, this case involves a matter of great public importance. There is no dispute that the safety and security of the State’s chief Executive-Branch official, as well as that of other State elected officials, their families, their staff, and members of the public who attend events with them, is a matter of paramount public concern and importance. Consequently, Ohio law provides for a security detail for the Governor, State buildings (including the Moyer Judicial Center), and, upon direction of the Governor, other State officials. *See* R.C. 5503.02(E)(1). Public disclosure of investigation records of threats made against the Governor (“the Records”) would increase the risks to the safety and security of the Governor and his family, and would expose security limitations and vulnerabilities. *See* Respondent’s Evidence, Affidavit of John Born, ¶ 8, 9; Affidavit of Paul Pride, ¶ 10; Affidavit of Richard Baron, ¶ 10, 11, 13, 19; Affidavit of Patrick Kellum, ¶ 11-13. Those charged with protecting the security of the Governor believe that those security limitations and vulnerabilities can and would be understood by entities seeking to do harm to the State and its officials, and applied in ways to maximize the effect of any harmful actions they seek to take. Affidavit of Paul Pride, ¶ 10; Affidavit of Richard Baron, ¶ 11, 13; Affidavit of Patrick Kellum, ¶ 11-12.

Second, this case involves complex issues of law, namely, whether (a) the Records are, under R.C. 149.433, “security records” exempt from the Public Records Act; (b) the Department has a clear legal duty to produce the Records with sensitive and confidential information redacted; and (c) public disclosure of the Records would be inconsistent with constitutional interests in personal security and bodily integrity. Moreover, there is a paucity of case law interpreting R.C. 149.433. The Department found only two cases (one from this Court) that even mention the statute; however, neither addresses whether threat-investigation records are security records: *State ex rel. Data Trace Info. Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St.3d 255, 2012-Ohio-753, 963 N.E.2d 1288, ¶ 65 (summarily finding, without discussion, that a county officer had not established that master CDs that include backup copies of all instruments recorded by the office every day were security records); *State ex rel. Bardwell v. Ohio Atty. Gen.*, 181 Ohio App.3d 661, 2009-Ohio-1265, 910 N.E.2d 504, ¶¶ 69, 70 (10th Dist.) (noting without analysis that the cell phone number of a trooper who had provided security for the Attorney General is not a public record under R.C. 149.433(B), which the relator did not dispute).

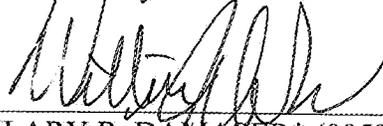
Finally, this case involves a substantial constitutional issue that has not been addressed by this Court, namely, whether public disclosure of the Records is inconsistent with the State’s interest in protecting the personal security of the Governor, his family, staff, and members of the public who attend his events. Both the federal Sixth Circuit Court of Appeals and this Court have held that the Fourteenth Amendment to the United States Constitution guarantees a clearly-established and fundamental right to personal security and bodily integrity. *Kallstrom v. Columbus*, 136 F.3d 1055, 1063 (6th Cir. 1998); *State ex rel. Cincinnati Enquirer v. Craig*, 132 Ohio St.3d 68, 2012-Ohio-1999, 969 N.E.2d 243, ¶ 13. Those cases concerned the disclosure of

certain information contained within police officers' personnel and other files. This case involves application of that right in the context of the security of the Governor and others, an issue that no Ohio court has yet addressed.

For these reasons, this Court should schedule this case for oral argument.

Respectfully submitted:

MICHAEL DeWINE  
Ohio Attorney General



HILARY R. DAMASER\* (0059190)

*\*Counsel of Record*

WILLIAM J. COLE (0067778)

Assistant Attorneys General

Executive Agencies Section

30 East Broad Street, 26th Floor

Columbus, Ohio 43215

614-466-2980

866-354-4086 fax

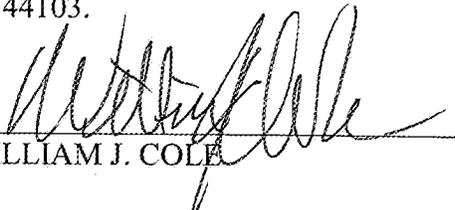
Hilary.Damaser@OhioAttorneyGeneral.gov

William.Cole@OhioAttorneyGeneral.gov

Counsel for Respondent

### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by regular and electronic mail on October 23, 2013, upon Victoria E. Ullmann, 1135 Bryden Rd., Columbus, OH 43205; and upon Jennifer M. Atzenberger, James L. Hardiman & Drew S. Dennis, American Civil Liberties Union of Ohio Foundation, 4506 Chester Ave., Cleveland, OH 44103.



WILLIAM J. COLE