

ORIGINAL

Case No. 2014-1141

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.*
OHIO REPUBLICAN PARTY,

Relator,

v.

EDWARD FITZGERALD, County Executive, County of Cuyahoga County,

and

COUNTY OF CUYAHOGA and KOULA CELEBREZZE,

Respondents.

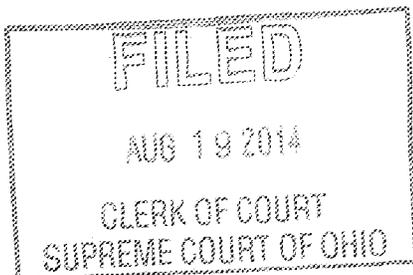
**RELATOR'S MOTION TO EXPEDITE
RULING ON RESPONDENTS' MOTION TO DISMISS
AND TO FORTHWITH ISSUE AN ALTERNATIVE WRIT**

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**RELATOR'S MOTION TO EXPEDITE
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The State of Ohio, on relation to the Ohio Republican Party (hereinafter, "Relator"), hereby moves the Court to expedite its ruling on the pending (and fully briefed) Respondents' Motion to Dismiss (filed on August 12, 2014) and to forthwith issue an alternative writ. This request is made so as to keep this case proceeding in a timely manner, especially in light of the time sensitive nature of the public records at issue. With the prompt issuance of an alternative writ, the parties should be able to develop the necessary evidentiary record within the normal schedule promulgated in original actions or a slightly modified version thereof, *see note 9, infra*, so that a timely decision may ultimately issue from this Court. In support hereof, the following memorandum is tendered.

MEMORANDUM IN SUPPORT

This public records mandamus action concerns the conduct and demonstrated standards of Respondent Edward FitzGerald in his position as the county executive for the County of Cuyahoga. Specifically, the public records sought and at issue in this case are the key card swipe data for parking facilities and county buildings for Mr. FitzGerald, documenting when he enters and/or exits such facilities or buildings. For in addition to being the county executive for the

County of Cuyahoga, Mr. FitzGerald is also currently a candidate for governor of the State of Ohio. And as this Court has repeatedly recognized, “[t]he public has an unquestioned interest in the qualifications of potential applicants for positions of authority in public employment.” *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Ed.*, 97 Ohio St.3d 58, 776 N.E.2d 82, 2002-Ohio-5311 ¶53. Thus, “[t]he requested records may be relevant to the electorate’s consideration of [FitzGerald’s] candidacy for public office.” *State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 816 N.E.2d 213, 2004-Ohio-4952 ¶22.

In the past few weeks, numerous news stories have broken which make all the more critical the timely disclosure of the public records at issue herein, especially with respect to Mr. FitzGerald’s utilization of the county parking facilities. Initially, on Friday, August 1, 2014, it was revealed that police in the City of Westlake discovered Mr. FitzGerald and a woman alone in his car on a vacant parking lot at 4:30 *a.m.* about two years ago. See “Call about suspicious car led Westlake police to Cuyahoga County Executive Ed FitzGerald and an unidentified woman in 2012, records show,” *The Cleveland Plain Dealer* (Aug. 1, 2014).¹ In a press conference that same day, Mr. FitzGerald attempted to explain away this middle-of-the-night/early-morning event as involving a close family friend who was part of a visiting Irish delegation and he was simply driving her back to her hotel when they became lost and confused over where she was staying, so they pulled into a vacant industrial-complex parking lot to figure things out together. See “FitzGerald dismisses car queries,” *Columbus Dispatch* (Aug. 3, 2014).² But the news reports didn’t end there; they continued.

¹ www.cleveland.com/open/index.ssf/2014/08/call_about_suspicious_car_led.html

² www.dispatch.com/content/stories/local/2014/08/01/fitzgerald-cancels-campaign-events-calls-press-conference.html

The following week, *i.e.*, on Tuesday, August 5, 2014, it was revealed that Mr. FitzGerald had gone 10 years without a valid permanent state driver's license, with said period including a period of time while he was county executive. See "FitzGerald went 10 years without valid, permanent Ohio driver's license, records indicate," *Cleveland Plain Dealer* (Aug. 5, 2014);³ "FitzGerald, lacking full license, apparently drove illegally after dropping off woman," *Columbus Dispatch* (Aug. 5, 2014);⁴ "Ed FitzGerald's driver's license lapse included time as mayor and safety director in Lakewood," *Cleveland Plain Dealer* (Aug. 5, 2014).⁵ Thus, questions arose as to whether Mr. FitzGerald broke the law after he supposedly dropped the close family friend off at her hotel. As reported in one of the stories:

If FitzGerald drove alone at any time during that five-year span from 2007 to late 2012, he would have been driving illegally, said Lindsey Bohrer, spokeswoman for the [Bureau of Motor Vehicles].

See "FitzGerald, lacking full license ...," *Columbus Dispatch* (Aug. 5, 2014).

And the foregoing news reports also tied directly into the records being sought herein.

For after the foregoing stories broke, *The Columbus Dispatch* then reported that:

two fellow Democrats with whom FitzGerald worked over the years who said they saw him drive a car alone between 2002 and 2012 — meaning that they apparently witnessed him breaking the law.

See "Witnesses saw FitzGerald driving alone," *Columbus Dispatch* (Aug. 6, 2014).⁶ And one of those two fellow Democrats of Mr. FitzGerald, Democratic Cuyahoga County Council President C. Ellen Connally, "said she often parked near FitzGerald in the county garage and saw him

³ www.cleveland.com/open/index.ssf/2014/08/fitzgerald_went_10_years_witho.html#incart_river

⁴ www.dispatch.com/content/stories/local/2014/08/04/Fitz_driver_license.html

⁵ www.cleveland.com/open/index.ssf/2014/08/ed_fitzgeralds_drivers_license.html#incart_related_stories

⁶ www.dispatch.com/content/stories/local/2014/08/05/witness-saw-fitzgerald-driving-alone.html

driving by himself.” See “Witnesses saw FitzGerald driving alone,” *Columbus Dispatch*. For in that latest story, *The Columbus Dispatch* recognized the importance of the requested public records at issue herein:

Through his county office, *FitzGerald has refused to release records showing when he arrives and leaves the premises*. FitzGerald has said he is refusing to release those records on the advice of the county sheriff, citing security concerns. *But that data also would show when his car entered and left the county parking garage. Unless FitzGerald had a driver or someone else with a license in the vehicle on those occasions prior to November 2012, he apparently broke the law each time.*

“Witnesses saw FitzGerald driving alone,” *Columbus Dispatch* (emphases added).

And just last week, it was revealed that, as county executive, Mr. FitzGerald has disciplined county employees for not holding a valid driver's license, with penalties ranging from a written reprimand to a five-day suspension without pay. See “Under Ed FitzGerald, Cuyahoga County has disciplined employees for lapsed driver's licenses,” *Cleveland Plain Dealer* (Aug. 5, 2014).⁷ Yet, until the stories broke concerning his apparent illegal driving, Mr. FitzGerald escaped any accountability for the same actions, raising issue of hypocrisy:

Bob Reid, the former county sheriff who says he was fired in January 2013 after clashing with FitzGerald, sees the discipline of others over driving-related offenses as hypocritical. In an interview, Reid recalled FitzGerald as having a quick-trigger for meting out punishment and believes that if another top administrator were found to have driven without a license for a similar period of time, FitzGerald would “insist that individual be fired.”

Reid added: “I believe that absolutely on an issue like this that there's a double standard.”

See “Under Ed FitzGerald, Cuyahoga County has disciplined employees” *Cleveland Plain Dealer*.

⁷ www.cleveland.com/open/index.ssf/2014/08/cuyahoga_county_under_ed_fitg.html

As noted above, the public has an unquestioned interest in the qualifications of potential applicants for positions of authority in public employment and that public records provide one means by which the electorate can consider Mr. FitzGerald's candidacy for public office. For it was the release of public records which revealed the foregoing saga of Mr. FitzGerald. And while Mr. FitzGerald may desire to stop further revelations through the release of additional public records, the public has a right to know -- and to timely know -- the full extent of Mr. FitzGerald's apparently illegal driving habits. For such information not only goes to the issue of Mr. FitzGerald's compliance with the motor vehicle laws of this State, but also his judgment, credibility and management style (all of which has been proven lacking). And all of these matters can and should play into the electorate's assessment of his candidacy. As a political analysis commented on the recent revelations concerning Mr. FitzGerald:

As bad as that early-morning parking incident was for FitzGerald, things were about to get a whole lot worse. Reports that FitzGerald went 10 years without a valid permanent driver's license -- including periods when he was county executive, Lakewood mayor and Lakewood safety director -- fail the common-sense test in ways that boggle the mind.

I've seen a lot of bizarre developments in nearly 45 years of covering local and state elections. This one's at or near the top of the list.

Worse yet, driving around without a valid license is so fundamentally wrong, so incredibly stupid, and its wrongness and stupidity so easy to understand, that it will raise doubts about FitzGerald in the mind of nearly every thoughtful voter -- of either political party.

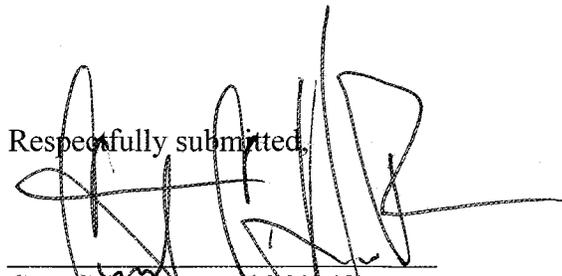
"Ed FitzGerald's campaign is over except for the epitaph, but he may take down the rest of the ticket, too," *Cleveland Plain Dealer* (Aug. 5, 2014).⁸ And this was before the more recent revelation of the double standard of Mr. FitzGerald disciplining employees for the same transgression for which Mr. FitzGerald gave himself a pass.

⁸ www.cleveland.com/opinion/index.ssf/2014/08/ed_fitzgeralds_campaign_is_ove.html#incart_m-rpt-1

As demonstrated above, records relating to Mr. FitzGerald's apparently illegal driving habits are a matter of public interest in the current gubernatorial campaign. In order that this public records mandamus action may be resolved in a timely manner in advance of the forthcoming gubernatorial election, Relator requests that the Court expedite consideration of the presently pending motion to dismiss. As developed in a separate filing, such motion is without merit and should promptly be denied, and, in so doing, an alternative writ issue. At this stage, if such resolution occurs promptly, Relator believes sufficient time should exist under the Court's normal scheduling in original actions, or a slight modification thereto, to allow a timely resolution of this case on the merits.⁹

⁹ Such scheduling being: the submission of evidence or an agreed statement of facts within 20 days of the issuance of the alternative writ; relator's brief submitted 10 days thereafter; respondents' brief, 20 days thereafter; and relator's brief, 7 days thereafter. If any modification is necessary to this schedule, Relator would suggest (and not oppose) expediting the submission of briefs such that relator's brief is due 7 days after the submission of evidence; respondents' brief, 14 days thereafter; and relator's reply brief, 4 days thereafter. If such a modification is made, Relator would request that such filings be permitted to be made via e-mail.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served upon the following via regular mail on the 19th day of August 2014:

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