

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,

and

COUNTY OF CUYAHOGA and KOULA CELEBREZZE,

Respondents.

**RELATOR'S SECOND MOTION TO TAKE JUDICIAL NOTICE
OF THE GOVERNMENTAL WEBSITE OF CUYAHOGA COUNTY**

Counsel for Relator

Curt C. Hartman (0064242)
THE LAW FIRM OF CURT C. HARTMAN
7394 Ridgepoint Drive, Suite 8
Cincinnati, OH 45230
(513) 752-2878
hartmanlawfirm@fuse.net

Daniel P. Carter (0074848)
LAW FIRM OF DANIEL P. CARTER
1400 West Sixth St. Suite 300
Cleveland, OH 44113
(216) 392-4509
dpc@dpcarterlaw.com

Chrisopher P. Finney (0038998)
FINNEY LAW FIRM LLC
4270 Ivy Pointe Blvd., Suite 225
Cincinnati, Ohio 45245
(513) 943-6655
chris@finneylawfirm.com

The State of Ohio, on relation to the Ohio Republican Party (hereinafter, "Relator"), hereby moves, pursuant to Ohio R. Evid. 201, for the Court to take judicial notice of the governmental website of Cuyahoga County "www.cuyahogacounty.us", and, in particular, the following webpage (which is attached hereto):

1. Exhibit A: <http://executive.cuyahogacounty.us/en-US/Budish-Takes-Oath-of-Office.aspx>, containing a press release issued by Cuyahoga County announcing that, on January 1, 2015, Armond Budish took the oath of office to become the Cuyahoga County Executive.

MEMORANDUM IN SUPPORT

It is well-established that "in mandamus actions, a court is not limited to considering facts and circumstances at the time a proceeding is instituted but should consider the facts and conditions at the time it determines whether to issue a peremptory writ." *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St.3d 10, 959 N.E.2d 524, 2011-Ohio-6009 ¶18 (2011) (quoting *State ex rel. Portage Lakes Edn. Ass'n, OEA/NEA v. State Emp. Relations Bd.*, 95 Ohio St.3d 533, 769 N.E.2d 853, 2002-Ohio-2839 ¶54 (2009)).

During the nearly six months that the present mandamus action has been pending before this Court, certain material facts have changed. One such fact is that the subject of the key card swipe data, *i.e.*, Edward FitzGerald, is no longer the Cuyahoga County Executive. For the governmental website of Cuyahoga County has confirmed that, as of January 1, 2015, Armond Budish took the oath of office to become the Cuyahoga County Executive. As developed more fully in the Relator's Motion for the Scheduling and Prompt Holding of Oral Argument, this now-existing fact further undermines the withholding of the key card swipe data (which have been withheld now for nearly eight months). In order that the fact that Mr. FitzGerald is no

longer a public official is properly before the Court, this request to take judicial notice of the website of Cuyahoga County is tendered.

Like its federal counterpart, Ohio R. Evid, 201 (B) allows courts to take judicial notice of facts which are not subject to reasonable dispute in that they are, *inter alia*, capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

“Public records and government documents are generally considered ‘not to be subject to reasonable dispute.’ This includes public records and government documents available from reliable sources on the Internet.” *States Resources Corp. v. Hendy*, 2011-Ohio-1900 ¶20 (9th Dist. 2011)(quoting *U.S. ex rel. Dingle v. BioPort Corp.* (W.D. Mich. 2003), 270 F.Supp.2d 968, 972, *aff’d sub nom. Dingle v. Bioport Corp.*, 388 F.3d 209 (6th Cir. 2004). And, thus, both federal and state courts have readily taken judicial notice of documents and information published on government websites. *E.g., State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 974 N.E.2d 516, 2007-Ohio-4798 ¶¶8 & 10 (court can take judicial notice of judicial opinions and public records accessible from the internet); *State v. Evans*, 2012-Ohio-5099 ¶8 (2d Dist. 2012)(taking judicial notice that the appellant’s name no longer appeared on the Ohio Department of Rehabilitation and Corrections website); *State v. Howard*, 2010-Ohio-2303 ¶22 (12th Dist. 2010)(“we hold that the trial *court* took proper judicial notice that Atrium was located in Franklin Township. This fact is not subject to reasonable dispute because it is capable of accurate and ready determination by reference to the Warren County Auditor’s website, a source whose accuracy cannot be questioned given its status as an official source of government information”); *Cali v. E. Coast Aviation S’ervs., Ltd.*, 178 F.Supp.2d 276, 287 (E.D.N.Y. 2001) (taking judicial notice of documents from Pennsylvania state agencies and Federal Aviation Administration); *States Resources Corp.*, 2011 -Ohio- 1900 ¶ 19 (“we conclude that the trial

court took proper judicial notice that Hendy was not current in his tax obligations. This fact is not subject to reasonable dispute because it is capable of accurate and ready determination by reference to the certified copy from the Summit County Auditor's website, a source whose accuracy cannot be questioned given its status as an official source of government information").

Accordingly, Relator requests the Court to take judicial notice of the attached press release obtained from the website of Cuyahoga County.

Respectfully submitted,

/s/ Curt C. Hartman
Curt C. Hartman (0064242)
THE LAW FIRM OF CURT C. HARTMAN
7394 Ridgpoint Drive, Suite 8
Cincinnati, OH 45230
(513) 752-2878
hartmanlawfirm@fuse.net

Daniel P. Carter (0074848)
LAW FIRM OF DANIEL P. CARTER
1400 West Sixth Street, Suite 300
Cleveland, OH 44113
(216) 392-4509
dpc@dpcarterlaw.com

Christopher P. Finney (0038998)
FINNEY LAW FIRM LLC
4270 Ivy Pointe Blvd., Suite 225
Cincinnati, Ohio 45245
(513) 943-6655
chris@finneylawfirm.com

Attorneys for Relator

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served upon the following via e-mail on the 2nd day of January 2015:

Majeed G. Makhoulf
Robin M. Wilson
Cuyahoga County Department of Law
Cuyahoga County Administrative Headquarters
2079 East Ninth Street, 7th Floor
Cleveland, Ohio 44115
mmakhoulf@cuyahogacounty.us
rwilson@cuyahogacounty.us

/s/ Curt C. Hartman



Reports Initiatives Orders

You are here: [Home](#) > [News](#) > [Press Releases](#)

Posted On: 1/1/2015

Armond Budish Takes Oath of Office at 12:01 A.M.

[ShareThis](#) [Facebook](#) [Tweet](#) [LinkedIn](#) [Pinterest](#) [Email](#)

Official Inauguration Ceremonies to Take Place on Jan. 4 at 3 P.M.

CLEVELAND — Cuyahoga County Executive Armond Budish was sworn into office at 12:01 a.m. with U.S. Rep. Marcia Fudge, D-Warrensville Heights administering the oath.

Official inauguration ceremonies will be held on Jan. 4th beginning at 3 p.m. at the Cleveland Convention Center & Global Center for Health Innovation, 1 St. Clair Ave.

"I am grateful and optimistic for the opportunity to begin working with the dedicated public servants on behalf of the good people of Cuyahoga County," Budish said. "We are at a pivotal point in our county's history. Now is the time to come together - business, elected and community leaders, public servants and our citizens – because our collective potential is unlimited."

"The future is bright. I know that, with our talented and dedicated team of county employees, Cuyahoga County will become an economic powerhouse. I am ready to get to work."

Office of County Executive
2079 East Ninth Street
Cleveland, OH 44115



- [Public Records Policy](#)
 - [Privacy Policy](#)
 - [Social Media Policy](#)
 - [Accessibility Statement](#)
 - [Disclaimer](#)
 - [County Home Page](#)
 - [A-Z Service Directory](#)
 - [Contact Us](#)
 - [FAQs](#)
 - [Terms of Use](#)
- Powered by the Department of Information Technology

Exhibit A