No. 08-500

# In The
# Supreme Court of the United States

CYNTHIA LAMBERT,

*Petitioner,*

v.

GREG HARTMANN, IN HIS OFFICIAL CAPACITY AS CLERK OF COURTS FOR HAMILTON COUNTY, OHIO, AND HAMILTON COUNTY BOARD OF COUNTY COMMISSIONERS,

*Respondents.*

*On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit*

## BRIEF IN OPPOSITION

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

CHRISTIAN J. SCHAEFER
*Counsel of Record*
MICHAEL FLOREZ
PAMELA SEARS
ASSISTANT PROSECUTING ATTORNEYS
230 E. NINTH STREET, SUITE 4000
CINCINNATI, OHIO 45202
DDN: (513) 946-3041
FAX: (513) 946-3018

*Counsel for Respondents*

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Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

## QUESTIONS PRESENTED

1. Does a case and controversy continue to exist in a case after third parties reimbursed the plaintiff for her losses and subsequent statutory changes have been enacted to prevent the alleged damage from again occurring?

2. When a person's name, social security number, address, driver's license number, physical description, birth date and signature are in the public domain because they are part of a Complaint and summons in a criminal case, does the right to privacy in the Fourteenth Amendment to the United States Constitution control the medium by which they are made available to the public?

3. Does the Fourteenth Amendment to the Constitution of the United States create a right to privacy in a person's name, social security number, address, driver's license number, physical description, birth date and signature?

4. Where the required contents of a Complaint and Summons include personal identifiers and where state law gives a county clerk of courts the non-discretionary duty to accept the Complaint and Summons for filing, is the county clerk of courts performing a state function and immune from suit under the Eleventh Amendment?

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The district court issued an order granting a motion to dismiss based upon the initial Complaint filed by Petitioners. Since the District Court did not convert the motion to dismiss into a motion for summary judgment, it did not consider the various depositions in its resolution of the case. The Petitioners also filed a motion to amend the Complaint to alter the relief requested. The District Court did not grant the motion to amend the Complaint. The Order of the District Court granting the motion to dismiss is unreported and attached as Appendix M.

The Sixth Circuit did consider the proposed amended complaint in affirming the decision of the District Court to dismiss the Petitioner's case. The decision of the Sixth Circuit is reported as *Cynthia Lambert v. Greg Hartmann and the Hamilton County Board of Commissioners* 517 F. 3d 433 (6th Cir. 2008). It is attached hereto as Appendix K. Motions for a rehearing and an *en banc* hearing were denied. The order denying rehearing and an *en banc* hearing are attached as Appendix L.

## JURISDICTION

The United States Supreme Court has jurisdiction to hear appeals from the circuit courts of appeal under authority of 28 U.S.C. 1254(1).

## CONSTITUTIONAL PROVISIONS, STATUTES, RULES & REGULATIONS

The following relevant provisions are inlcuded in the appendix: Eleventh Amendment to the United

States Constitution, Appendix A; Fourteenth Amendment to the United States Constitution, Appendix B; R.C. 1901.20, Appendix E; R.C. 1901.31(E), Appendix F; R.C. 149.43, Appendix D; R.C. 4507.13(A), Appendix G; 5 U.S.C. § 552, Appendix C; Ohio Traffic Rule 1(B), Appendix H; Ohio Traffic Rule 3, Appendix I.

## STATEMENT OF THE CASE

Since 1975, Ohio has had a uniform system for traffic tickets set out in the Ohio Traffic Rules. A traffic ticket is required to be on the forms set out in the Appendix to the Ohio Traffic Rules. See Ohio Traffic Rule 3. The traffic ticket constitutes a summons and complaint which must be used in all moving violation cases in Ohio. All Ohio Courts having jurisdiction over traffic cases must accept the Ohio Uniform Traffic Ticket for filing. Significantly, the Ohio Uniform Traffic ticket contains a place for the issuing officer to insert the offender's name, social security number, address, driver's license number, physical description, and birth date as well as a place for the traffic offender to sign acknowledging receipt of the summons contained in the traffic ticket. Each ticket is to be issued as an original and three copies. The original goes to the court in which the case will be heard. One copy is given to the offender. Another is retained by the police department issuing the ticket. The third, and final copy, is sent to the Ohio Bureau of Motor Vehicles. See Ohio Traffic Rule 3.

Ohio Municipal Courts have jurisdiction over traffic cases. See *R.C. 1901.20.* Respondent Hartmann is the Clerk of the Hamilton County Municipal Court who is required, among other things, to ". . . file and safely

keep all journals, records, books and papers belonging or appertaining to the court; record the proceedings of the court" and " . . . prepare and maintain a general index, docket, and other records of the court that the court, by rule , requires, all of which shall be the public records of the court." See *R.C. 1901.31(E).* Ohio also has a public records law, *R.C. 149.43*, which makes all records held by Ohio governmental units public unless a particular exemption applies[1]. At the time of the actions alleged in Petitioner's Complaint, filed with the District Court, no exemption from the public records law for social security numbers or personal identifying information existed. Additionally, *R.C. 149.43*, requires custodians of public records to make the records available to the public in the medium in which they were stored. *R.C. 149.43(B)(6).* Custodians of the records must make original documents available for public view. See *R.C. 149.43(B)(1).* While penalties exist for non-disclosure of Ohio public records, no penalties exist for disclosure of exempt documents. See *State ex rel. Akron Beacon Journal v. Maurer*, 91 Ohio St. 3d 54 (2001). In 1999, Respondent Hartmann's predecessor made the public records held by the Hamilton County Clerk of Courts available to the public on the Internet. Complaint ¶5.

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[1] *R.C. 149.43* has been amended numerous times since the actions alleged in the Complaint. The Ohio Supreme Court has interpreted R.C. 149.43 to allow the custodian of the records to redact certain information and to provide additional monetary penalties for non-disclosure by a records custodian. See *State ex rel Highlander v. Ruddick*, 103 Ohio St. 3d 370, 816 N.E.2d 213 (2004); *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St. 3d 207, 842 N.E.2d 508 (2006). The citations to *R.C. 149.43* in the text are to the version that existed in September, 2003.

Against this backdrop, on September 23, 2003, a traffic ticket was issued to Petitioner Lambert. Complaint ¶7. The traffic ticket was issued to Petitioner Lambert and processed in accordance with the Ohio Traffic Rules. Complaint ¶8, ¶9. Approximately one year after receiving the traffic ticket, Petitioner Lambert alleges that her personal information was used to fabricate a fake driver's license which was presented at a Sam's Club and a Home Depot to make purchases on credit. Complaint ¶11. The Complaint does not allege that Petitioner Lambert's social security number appeared on the fake driver's license.[2] Ohio law does not require that a social security number be on the driver's licence. *R.C. 4507.13(A).*

While copies of the traffic ticket were available in paper form at the Ohio Bureau of Motor Vehicles, the issuing police department, the Hamilton County Clerks office, in addition to the paper copy in Petitioner Lambert possession, she speculates that the person posing as Petitioner Lambert in creating the fake driver's license "might" have obtained a copy of the traffic citation from the official website of Petitioner Hartmann or his predecessor. Complaint ¶13.

Subsequently, a Ms. Sutherland was arrested for stealing Petitioner Lambert's identity. Ms. Sutherland, at the time the Complaint was filed, was

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[2] The Complaint alleges that the fake driver's license contained a fake driver's license number. In extending credit to the criminal in Petitioner Lambert's name, Home Depot and Sam's Club apparently relied upon fake personal identifiers on a fake driver's license. Complaint ¶ 13.

awaiting trial. Complaint ¶16. The Complaint sought money damages and injunctive relief to prevent the Petitioner Hartmann from publishing the personal identification information on his website.

A Complaint was filed in the United States District Court, Southern District of Ohio on December 20, 2004. (Doc. 1). A motion to dismiss the Complaint was filed on September 2, 2005. (Doc. 35). The motion to dismiss was granted on December 29, 2006. (Doc. 69). The District Court held that Petitioner Lambert had no right of privacy in her name, social security number, address, driver's license number, physical description, birth date and signature all of which were on the traffic ticket. The District Court relied upon *J.P. v. DeSanti*, 653 F.2d 1080 (6th Cir. 1981). The Sixth Circuit affirmed on February 5, 2008. An *en banc* hearing was denied on July 14, 2008.

Because of the length of time between the filing of the Motion to Dismiss and the Order granting the Motion to Dismiss, numerous depositions were taken. Additionally, Petitioner moved to amend her Complaint because she was made whole by the retailers. The adoption of certain Local Rules of Procedure and changes in the Ohio Public Records Law made Petitioner Lambert's initial claims moot. (Doc. 29 ). The only remaining request for relief by Petitioner Lambert, in a proposed Amended Complaint, is that she be provided with credit monitoring. The District Court did not use the facts developed in the depositions to rule on the Motion to Dismiss. The District Court did not grant leave to file the proposed Amended Complaint.

The Sixth Circuit did discuss whether a case and controversy remained after Ohio law changed and the retailers made Petitioner Lambert whole from monetary losses. Based upon the unfiled proposed Amended Complaint, the Sixth Circuit concluded that a case and controversy remained.

## ARGUMENT

The considerations governing this Court's jurisdiction on a writ of certiorari are enumerated in Rule 10 of the Rules of the Supreme Court of the United States. That rule clearly states, in relevant part, "A petition for a writ of certiorari will only be granted for compelling reasons." Although Petitioner attempts to style her issue as meeting many of the items included in Rule 10 regarding the character of the reasons that this Court would grant a writ of certiorari, a close reading of Petitioner's Brief clearly demonstrates that she is not complaining about what was put in the public record. This is a matter upon which the circuit courts of appeal may differ. Instead, Petitioner is asking this court to issue a constitutional ruling about the format used to make the public records available to the public. The circuit courts of appeal and the cases decided by this Court make no such distinction.

## I. Petitioner Lambert lacks standing to bring this action in the District Court because she was made financially whole by the retailers and Ohio law has changed to authorize removal of the contested information in the official documents posted on Respondent Hartmann's website.

Standing is arguably "...the most important of the [Article III] doctrines." *Allen v. Wright*, 468 U.S. 737, 751, 104 S.Ct. 3315, 3324, 82 L.Ed 2d. 556 (1984). The elements of standing under Article III require that a plaintiff must show "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 119 L. Ed.2d 351, 112 S.Ct. 2130 (1992). Also, see *County of Los Angeles v. Davis*, 440 U.S. 625, 59 L.Ed. 642, 99 S.Ct. 1379 (1979); *O'Shea v. Littleton*, 414 U.S. 488, 494, 38 L.Ed.2d 674, 94 S.Ct. 669 (1974) ("Abstract injury is not enough."). This Court has made clear that a federal district court lacks jurisdiction over a case if a plaintiff does not meet the threshold requirements of standing imposed by Article III:

> Plaintiffs in the federal courts "must allege some threatened or actual injury resulting from the putatively illegal actions *before* a federal court may assume jurisdiction."

*O'Shea*, 414 U.S. at 493 (emphasis supplied); *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). Standing must exist when the Complaint is filed.

*Cleveland Branch, NAACP v. City of Parma*, 263 F.3d 513, 525-26 (6th Cir. 2001).

Standing requirements cannot be waived. Standing can be raised at *any* time by a defendant and, even if the defendant does not raise the issue, the federal courts must do so.

> Even if no party raises the propriety of plaintiffs' standing, we "are under an independent obligation to examine [our] own jurisdiction, and standing is perhaps the most important of [the jurisdictional] doctrines."

*United States v. Hays*, 515 U.S. 737, 742 (1995), citing *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 230-231, 107 L. Ed.2d 603, 110 S.Ct. 596 (1990). Finally, the parties to a lawsuit do not have the power, either by agreement or mistake, to confer jurisdiction upon a court by conceding the standing of a plaintiff. *Cleveland Branch, NAACP v. City of Parma*, 263 F.3d 513, 525-26 (6th Cir. 2001) ("...[Standing] cannot be bestowed if it does not exist on its own"); *Barhold v. Rodriguez*, 863 F.2d 233, 234 (2d Cir. 1988); *Wilson v. Glenwood Intermountain Properties*, 98 F.3d 590, 593 (10th Cir. 1996). Also see, *Valley Forge Christian College v. Americans United For Separation*, 454 U.S. 464 (1982), quoting *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 at 227 (1974) ("...the assumption that if respondents have no standing to sue, no one would have standing, is not reason to find standing.").

In the instant case, the subsequent proposed amended Complaint makes clear that Sam's Club and the Home Depot made Petitioner Lambert whole, financially. Respondent Hartmann convened a task

force, prior to the filing of this action in the District Court, to review the availability of public court records via the website. The task force recommended the adoption of a local rule by the Hamilton County courts. Local Rule of Common Pleas, subsequently adopted in July of 2005, addressed remote public access to sensitive information, including SSN's, on the website.

Subsequent to the adoption of this Local Rule the Ohio Supreme Court reversed its prior ruling and found that SSN's were not "records" for purposes of Ohio Public Records law.[3] Prior to this directive from the Ohio Supreme Court the only method to alter such a record or seal it was by obtaining a court order.

The Sixth Circuit found that there was no actual monetary financial injury. The steps taken by the Ohio Courts reduce the on-line acquisition of personal identifiers from the Internet. The Sixth Circuit, however, found that a case and controversy still existed because ". . .if Lambert were able to prove that she continues to face an increased risk of identity theft, she could likely show that monitoring suspicious activity on her credit report would not only combat that future risk, but would help to redress the past financial injury that she suffered." In short, the Sixth Circuit found a case and controversy by speculating that maybe someone else in the future might steal Lambert's personal identifiers from the Respondent Hartmann's website. Maybe that thief would use the

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[3] The first case in Ohio to suggest the redaction of social security numbers was *State ex. rel Highlander v. Ruddick*, 103 Ohio St. 3d 370, 816 N.E.2d 213 (2004), where the Supreme Court granted a writ of mandamus for public records, but honored the petitioner's request to redact SSN.

information to again induce Home Depot and Sam's club to extend credit to someone impersonating Petitioner Lambert. In that case Home Depot and Sam's Club could again make Petitioner Lambert financially whole.[4]

This alleged injury or threat of injury was not "real or immediate;" rather, it was purely conjectural. *Valley Forge*, 454 U.S. 464 at 485-86 (emphasis in original) ("They fail to identify any personal injury suffered by them *as a consequence* of the alleged unconstitutionality, other than the psychological consequence presumably produced by observation of conduct with which one disagrees."); *Schlesinger*, 418 U.S. at 218 (emphasis supplied) ("...whatever the 'case or controversy' requirement embodied, its essence is a requirement of '*injury in fact.*'")

In short, Petitioner Lambert is not and has not suffered an injury. She is not under the threat of "real and immediate injury." Rather, Petitioner Lambert's claimed future injury is entirely "conjectural" and "hypothetical".

In Steel Co. v. *Citizens for Better Environment,* 523 U.S. 83, 140 L. Ed. 2d 210, 118 S. Ct. 1003 (1998), this Court adhered to the rule that a federal court may not hypothesize subject-matter jurisdiction for the purpose of deciding the merits. Steel Co. rejected a doctrine, once approved by several Courts of Appeals, that

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[4] The proposed Amended Complaint alleges that Petitioner Lambert took the steps to "insure that she will not be held liable for any unauthorized charges." Proposed Amended Complaint ¶ 14

allowed federal tribunals to pretermit jurisdictional objections "where (1) the merits question is more readily resolved, and (2) the prevailing party on the merits would be the same as the prevailing party were jurisdiction denied." 523 U.S. at 93. Recalling "a long and venerable line of our cases," 523 U.S. at 94, *Steel Co.* reiterated: "The requirement that jurisdiction be established as a threshold matter . . . is 'inflexible and without exception,'" 523 U.S. at 94-95 (quoting *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U.S. 379, 382, 28 L. Ed. 462, 4 S. Ct. 510 (1884)); for "jurisdiction is power to declare the law," and "'without jurisdiction the court cannot proceed at all in any cause,'" 523 U.S. at 94 (quoting *Ex parte McCardle*, 74 U.S. 506, 7 Wall. 506, 514, 19 L. Ed. 264 (1869)).

This Court should not grant certiorari because there is no longer a case and controversy between the Petitioner Lambert and the Respondents.

## II. Once personal identifiers are part of a Complaint and Summons in a criminal case and the defendant makes no request to the trial court to seal or redact the public record of the criminal case, no violation of the constitutional right of privacy occurs when the public information is made available on the Internet.

Petitioner's claims against Respondents are summed up in the class action allegations in paragraph 23 of the Complaint which states:

> 23. Plaintiff's claim is typical of the claims of the putative class. Plaintiff and all members of

> the putative class have been damaged in that private information has been published on the Clerk of Court's wbsite.

It is not specifically identifying the criminal defendant in the public record that is the alleged wrong. Instead, it is the publication of that information on the county's website that is the alleged wrong in this case.

This Court in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980) held that the public has a right to open access to criminal trials and the right can only be abridged by particularized findings by a trial court. This Court explained:

> We hold that the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and "of the press could be eviscerated." *Branzburg*, 408 U.S., at 681, 92 S.Ct., at 2656.
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> * * *
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> Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public.

In this case, the charging instrument, the traffic ticket, contained Petitioner's personal identifiers. There is no allegation by Petitioner that the trial court in the criminal case found any overriding confidentiality in the records of the criminal case.

In *Cox Broadcasting v. Cohn* 420 U.S. 469 (1975), this Court had before it a case where the name of a rape victim was published by a newspaper after it appeared in official court records. This Court determined that once the information appears in official court records that are open to the public, they are public and may be published. This Court explained:

> By placing the information in the public domain on official court records, the State must be presumed to have concluded that the public interest was thereby being served. Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business. In preserving that form of government the First and Fourteenth Amendments command nothing less than that the States may not impose sanctions on the publication of truthful information contained in official court records open to public inspection.

Thus, once the material concerning a criminal trial is in the public record, it is public and may be published in any form.

In this case, Petitioner does not complain about the requirement of the Ohio Traffic Rules that the Complaint and Summons contain personal identifiers

and the signature of the accused. Petitioner does not complain that in Ohio, the charging documents in a criminal case are public record. Instead, Petitioner is solely concerned with the decision of the predecessor of Respondent Hartmann to make those public records available to the public in electronic format on the Internet.

The prior caselaw of this Court on the issue of public records is simple: once a matter is in the public record it is just that, public. Petitioner would have this Court refine this simple concept to hold that some emanation or penumbra of the United States Constitution makes a distinction between records made public in paper form and records made public electronically. No case ever decided by this Court hints that such a distinction has constitutional dimension.

## III. The Fourteenth Amendment to the Constitution of the United States does not create a right to privacy in a person's name, social security number, address, driver's license number, physical description, birth date and signature.

The Sixth Circuit has limited the informational privacy interest protected by the Fourteenth Amendment to two circumstances. One circumstance is the type of information that could lead to personal harm. The second is the type of information which is sexual, personal, and humiliating in nature. The Sixth Circuit explained in its opinion below that it reached this determination by construing *Whalen v. Roe* 429 U.S. 589, 599-600 and footnote 26 (1977) and *Nixon v. Adm'r of Gen. Servs* 433 U.S.425, 465 (1977) as

extending the right of informational privacy only to interests that implicate a fundamental liberty interest.

Petitioner Lambert does not attack the compelling interest of the state in requiring positive identification of those charged with violating traffic laws. Petitioner Lambert does not challenge the requirements of traffic tickets set out in the Ohio Traffic Rules. Instead, Petitioner Lambert claims, that her privacy interest in her personal identifying information should be determined by employing a "reasonable expectation of privacy" analysis. The Sixth Circuit acknowledged in its opinion that other circuit courts of appeal have used this approach.

This case, however, is not illustrative of the distinct approaches used by various circuit courts to determine the extent and nature of one's informational privacy. It is clear that "personal identifiers", using the Sixth Circuit's analysis, do not have constitutional privacy protection as they do not involve questions of fundamental rights as defined by this Court. Likewise, Petitioner Lambert could not show a reasonable objective expectation of privacy that would justify keeping her "personal identifiers from the public record. She was charged with a violation of traffic laws. Once that occurred, she had no reasonable expectation that information sufficient to identify her would be withheld from the public record. It is undoubtedly inconvenient and embarrassing for persons charged with even petty crimes such as theft, drug abuse, disorderly conduct, prostitution, or voyeurism to be sufficiently identified in the public record so that the public knows which John Smith or which Jane Jones was charged. But, a person cannot have a reasonable expectation that he can remain

anonymous while criminal charges are pending against him.[5]

This is not a case where credit card numbers, bank account numbers, or passwords used by Petitioner were placed in the public record gratuitously. Instead, Petitioner Lambert complains that her name, social security number, address, incorrect driver's license number, physical description, and birth date and signature were placed in the public record by the filing of her traffic ticket with the clerk of courts. All of these identifiers are either in the public record or have been assigned by public entities. One must provide this information to a bureau of motor vehicles to obtain a driver's license. One's birth date is recorded with the bureau of vital statistics. One must display one's personal identifiers to buy alcohol or cigarettes, vote, obtain credit, contract, drive, or collect various governmental benefits. One's address is undoubtedly on voter roles or in a county recorder's office. One's physical description is displayed in public. One's signature facsimile is displayed regularly on voter roles and on checks, credit cards and credit card receipts. In short, all of these personal identifiers are used and displayed in the every day commerce.

Left are the social security number and the incorrect driver's license number. A person has no legitimate privacy interest in a fake driver's license number. Social Security Numbers are published on

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[5] In fact in this case, Petitioner Lambert initially did not pay the traffic ticket. A warrant issued for her arrest. Clearly, Petitioner Lambert's personal identifiers were critical to prevent passive identity theft, i.e., the arrest of the wrong "Cynthia Lambert".

federal and state tax liens by county recorder's offices throughout most states. The Privacy Act of 1974 provides:

> [N]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, . . . unless disclosure of the record would be . . . for a routine use. 5 U.S.C.A. §552a(b)

The use of the social security number on a traffic ticket is a routine use. A routine use is one that is for a necessary purpose. The identification of the individual subject charged with a traffic violation is a necessary purpose and, therefore, a routine use.. The charging document, the traffic ticket, was filed with the Clerk. At the filing of the document (actually at its creation) it became a public record. The publication of public documents is a routine use of that information.

In short, Petitioner Lambert had no reasonable expectation of privacy in the information routinely placed on every traffic ticket in the state of Ohio.

## IV. Respondents are protected from claims for monetary damages by the eleventh amendment.

It is well established that states and state officers acting in their official capacities are immune from suits for damages in federal court, see *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974); *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). In most cases, where county officials are using discretion to

carry out their county functions, the Eleventh Amendment "does not extend to counties and similar municipalities." *Mt Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977).

If, however, the County Official is merely carrying out a state mandate, the county official is entitled to Eleventh Amendment immunity. "Where county officials are sued simply for complying with state mandates that afford no discretion, they act as an arm of the State." *Brotherton v. Cleveland*, 173 F.3d 552, 566 (6th Cir. 1999) (citations omitted). See also *Scott v. O'Grady*, 975 F.2d 366, 371 (7th Cir. 1992)(holding that county official acted as arm of the State where official merely executed writ pursuant to state non-discretionary duty), cert. denied, 508 U.S. 942, 113 S.Ct. 2421, 124 L.Ed.2d 643 (1993); *Echols v. Parker*, 909 F.2d 795, 801 (5th Cir. 1990) (finding that local officials acted as State agents when they enforced a State anti-boycott statute by prosecuting boycotters, stating: "[a] county official pursues his duty as a state agent when he is enforcing state law or policy.")

After the Complaint in this case was filed, the Ohio Courts limited disclosure of social security numbers and other personal identifiers. The proposed Amended Complaint now only seeks (though styled in terms of injunctive relief) the cost of credit monitoring from the Respondents.

Equally clear is that the traffic ticket contained Petitioner Lambert's personal identifiers and that Respondent Hartmann accepted the traffic ticket for filing as was required by the Ohio Traffic Rules. Ohio Court Rules of Procedure, including the Ohio Traffic

Rules, are creations of the Ohio Supreme Court. See Ohio Traffic Rule 1(B). No discretion was given to Respondent Hartmann to refuse to accept the ticket for filing. See Ohio Traffic Rule 3(C). At the time the traffic ticket was filed, no provision of the Ohio Public Records Act gave Respondent Hartmann authority to alter the Court records in his possession or to refuse to provide them upon request to the public.

Clearly, Respondent Hartmann performed non-discretionary functions, required of him by state law. Under the Eleventh Amendment, Respondents are immune from suit for the only remaining claim of Petitioner Lambert, payment of the cost to monitor her credit.

## CONCLUSION

Whether the Sixth Circuit or other Circuit Courts of Appeal properly interpret *Whalen v. Roe* 429 U.S. 589, 599-600 and footnote 26 (1977) and *Nixon v. Adm'r of Gen. Servs* 433 U.S.425, 465 (1977) makes no real difference to the resolution of this case. Under either test, the result is the same. The issue raised in the Petition for a Writ of Certiorari is not a matter of great legal importance and there are no compelling reasons to grant the Petition. The Writ of Certiorari should be denied.

Respectfully submitted,

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

Christian J. Schaefer
*Counsel of Record*
Michael Florez
Pamela Sears
Assistant Prosecuting Attorneys
230 E. Ninth Street
Suite 4000
Cincinnati, Ohio 45202
DDN: (513) 946-3041
FAX: (513) 946-3018

ATTORNEYS FOR RESPONDENTS