

**IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY**

**STATE OF OHIO, ex rel.
JOHN BECKER**
925 Locust Lane
Cincinnati, Ohio 45245

Relator,

vs.

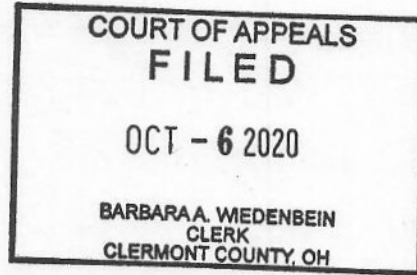
**D. VINCENT FARIS
PROSECUTING ATTORNEY
CLERMONT COUNTY, OHIO**
76 South Riverside Drive, Second Floor
Batavia, Ohio 45103

Respondent.

Case No. **2020 CA 10 058**

Original Action in Mandamus

**COMPLAINT FOR
WRIT OF MANDAMUS**



VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

Counsel for Relator:

NICHOLAS R. OWENS (0089574)
The Law Office of Nicholas R. Owens
88 Station Drive
Georgetown, Ohio 45121
Phone: (513) 706-2634
Email: nick@nickowenslaw.com

Comes now the STATE OF OHIO, by and on relation to John Becker (“Relator”), and, in support of its claim for the issuance of a writ of mandamus and an award of attorney fees, costs, and expenses, alleges as follows:

1. This is a complaint for a writ of mandamus to compel Respondent to comply and act in accordance with his clear legal duty, pursuant to Revised Code (R.C.) 2935.10(A), to conduct a formal and/or systematic investigation into the alleged criminal behavior by Governor R. Michael DeWine as a result of the private citizen affidavit filed by Relator in the Clermont County Municipal Court.

2. This Court possesses subject matter jurisdiction over this original action pursuant to Article IV, Section 3 of the Ohio Constitution, R.C. 2731.02, and Rule 21 of the Twelfth Appellate District Local Rules.

3. Relator John Becker is a person and resident of Clermont County, Ohio.

4. Respondent D. Vincent Faris is the Clermont County Prosecuting Attorney.

5. Respondent as Clermont County Prosecuting Attorney has all powers and duties conferred upon him pursuant to Chapter 309 of the Revised Code.

The Filing of a Private Citizen Affidavit

6. On September 28, 2020, at 11:03 a.m., Relator filed a private citizen affidavit, pursuant to R.C. 2935.09(D), in the Clermont County Municipal Court charging seven felony (and three misdemeanor) offenses against Governor R. Michael DeWine. *See Exhibit 1.*

7. Specifically, Relator filed his private citizen affidavit with Clerk of Courts Tim Rudd requesting in writing that Clerk Rudd officially file Relator’s “affidavit concerning Governor

DeWine on the court's docket and immediately forward it to the Administrative Judge of the Clermont County Municipal Court for its prompt review." *See Exhibit 2.*

8. Clerk of Courts Tim Rudd did not follow the written request of Relator to: 1.) docket the affidavit or 2.) forward the affidavit to the Administrative Judge; but rather Clerk Rudd forwarded the private citizen affidavit directly to the Respondent.

9. On September 28, 2020 at 3:44 p.m., Respondent in an email communication to Clerk Rudd stated the following, "I have reviewed the paperwork and do not find a basis for the filing of a complaint pursuant to this Private Citizen's Affidavit." *See Exhibit 3.*

10. On September 30, 2020, undersigned Counsel on behalf of Relator submitted a public records request to the Respondent requesting all records relating to the private citizen affidavit filed by Relator involving Governor R. Michael DeWine. *See Exhibit 4.*

11. On October 1, 2020, Chief Assistant Clermont County Prosecuting Attorney G. Ernie Ramos, on behalf of the Respondent, stated the following in an email communication regarding Relator's filed private citizen affidavit and public records request, "The investigation included a thorough examination of the allegations in the affidavit Mr. Becker filed and the relative criminal statutes however there are no records that are responsive to a public records request." *See again Exhibit 4.*

Private Citizen Affidavit: R.C. 2935.09(D) and 2935.10(A)

12. R.C. 2935.09(D) authorizes a private citizen "who seeks to cause an arrest or prosecution" to "file an affidavit charging [an] offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate."

13. Courts read R.C. 2935.09(D) in pari materia with R.C. 2935.10, which prescribes the procedure to be followed once a citizen files an affidavit charging an offense. *State ex rel. Brown v. Nusbaum*, 152 Ohio St.3d 284, 2017-Ohio-9141, ¶ 12.

14. If a private citizen affidavit charges a felony, R.C. 2935.10(A) directs a trial court “shall” take one of two actions: (1) issue a warrant for the arrest of the person charged in the affidavit, or (2) refer the matter to the prosecuting attorney for investigation if the trial court has reason to believe that the affidavit was not filed in good faith or the claim is not meritorious. *Id.*

Writ of Mandamus is Appropriate

15. Relator incorporates the preceding paragraphs of its Complaint as if fully restated here.

16. To be entitled to mandamus relief, the relator “must establish by clear and convincing evidence (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of respondents to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Evans v. Tieman*, 157 Ohio St.3d 99, 2019- Ohio-2411, 131 N.E.3d 930, ¶ 11, citing *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6, 13.

17. A writ of mandamus is a command directing the “performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” R.C. 2731.01.

18. A writ cannot compel the exercise of a permissive act. *State ex rel. Hodges v. Taft*, 64 Ohio St.3d 1, 4, 591 N.E.2d 1186 (1992). Nor can it “issue to control an officer’s exercise of discretion, but it can be issued to compel him to exercise it when he has a clear legal duty to do so.” *Id.*

19. Respondent has a clear legal duty to perform an actual and legitimate investigation which includes but is not limited to a formal and systematic inquiry of Relator's filed private citizen affidavit.

20. Respondent's clear legal duty under the statute requires more than just reviewing and thoroughly examining the "paperwork". *See again Exhibit 3.*

21. Respondent's clear legal duty requires an actual and legitimate investigation of the seven charged felony offenses, which could not have been reasonably accomplished by Respondent within a five-hour timeframe.

22. Additionally, an actual and legitimate investigation that included a formal and/or systematic inquiry of Relator's filed private citizen affidavit would have produced at least some public records.

23. The issuance of a writ of mandamus will serve the public interest and provide a public benefit by forcing recalcitrant prosecuting attorneys, in this case the Respondent, to perform actual and legitimate investigations upon receiving a private citizen affidavit.

24. The issuance of a writ of mandamus will serve the public interest and provide a public benefit by encouraging and promoting compliance in the future by prosecuting attorneys of their clear statutory requirement as prescribed by R.C. 2935.10(A).

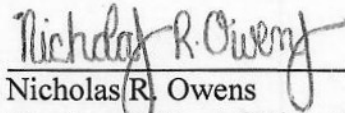
25. The right of a private citizen to file a private citizen affidavit is a vital statutory right to insure those who are believed to have committed criminal violations are held accountable for their actions. When a felony offense is alleged, R.C. 2935.10(A) requires an actual and legitimate investigation by a prosecuting attorney and not an "investigation" that is a sham.

26. Relator has no adequate remedy in the ordinary course of the law to compel Respondent to properly conduct an investigation regarding Relator's filed private citizen affidavit.

WHEREFORE, Relator respectfully prays the Court to grant the following relief:

- A. The issuance of a Writ of Mandamus compelling Respondent to comply with his clear legal duties under R.C. 2935.10(A), specifically, to conduct an actual and legitimate investigation regarding Relator's filed private citizen affidavit;
- B. Assess the costs of this action against Respondent;
- C. Award Relator attorney fees and expenses; and
- D. Award all other relief to which Relator may be entitled in law or in equity.

Respectfully submitted,



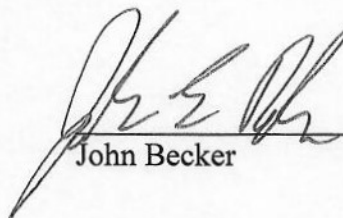
Nicholas R. Owens
The Law Office of Nicholas R. Owens
88 Station Drive
Georgetown, Ohio 45121
Phone: (513) 706-2634
Email: nick@nickowenslaw.com

Counsel for Relator, John Becker

VERIFICATION

State of Ohio, County of Clermont ss:

Comes now, John Becker, having been duly cautioned and sworn and declares that he has personal knowledge of the factual allegations above and such allegations are true and accurate.

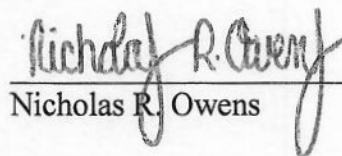


John Becker

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, on this 6th day of October 2020.

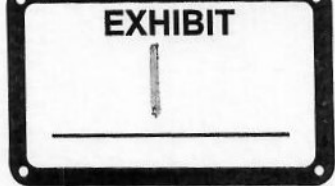


NICHOLAS RYAN OWENS, Attorney at Law
Notary Public, State of Ohio
My Commission Has
No Expiration Date
Section 147.03



Nicholas R. Owens

FILED



2020 SEP 28 AM 11:03

TIMOTHY R. RODE
CLERK OF MUNICIPAL COURT
CLERMONT COUNTY, OHIO

PRIVATE CITIZEN AFFIDAVIT

pursuant to Ohio Revised Code 2935.09(D)

COPY

State of Ohio
Clermont County, ss:

NAME AND ADDRESS OF WITNESS WHO OBSERVED OFFENSES OR HAS KNOWLEDGE OF THE FACTS CONCERNING IT:

John Becker
925 Locust Lane
Cincinnati, Ohio 45245

Your Affiant, John Becker being first sworn, says in good faith and meritoriously that Governor R. Michael DeWine, committed throughout the State of Ohio but specifically in Clermont County, on or about March 16, 2020 until present, the following criminal offenses in violation of the peace and dignity of the State of Ohio:

- Engaging in pattern of corrupt activity, Ohio Revised Code 2923.32(A)(1), a felony of the 2nd degree;***
- Complicity, Ohio Revised Code 2923.03(A)(1), a felony of the 2nd degree;***
- Terrorism, Ohio Revised Code 2909.24(A)(1), a felony of the 2nd degree;***
- Making terroristic threat, Ohio Revised Code 2909.23(A)(1)(a), a felony of the 3rd degree;***
- Inducing panic, Ohio Revised Code 2917.31(A)(3), a felony of the 3rd degree;***
- Conspiracy, Ohio Revised Code 2923.01(A)(1), a felony of the 3rd degree;***
- Bribery, Ohio Revised Code 3599.01(A)(2); a felony of the 4th degree;***
- Interfering with civil rights, Ohio Revised Code 2921.45(A), a misdemeanor of the 1st degree;***
- Coercion, Ohio Revised Code 2905.12(A)(5), a misdemeanor of the 2nd degree; and***
- Patient abuse or neglect, Ohio Revised Code 2903.34(A)(3), a misdemeanor of the 2nd degree.***

Governor R. Michael DeWine has held the Office of Governor of Ohio since January 14, 2019. Governor Michael DeWine under the color of his office has continuously violated the separation of powers doctrine by directing, allowing, colluding, and/or conspiring with the Ohio Department of Health to issue continuous orders outside the scope of its rulemaking authority, which is tantamount to creating new laws, a duty exclusively reserved to the Ohio General Assembly.

On March 16, 2020, Governor DeWine, during a heavily publicized press conference in solicitation, association, collusion, and in conspiracy with Ohio Secretary of State Frank LaRose, without statutory authority unlawfully coerced millions of electors in Ohio to refrain from voting during the March 17, 2020 Presidential Primary Election. Additionally, Governor DeWine solicited Secretary LaRose together with himself to confidently, albeit incorrectly, state that the Presidential Primary Election would be changed from March 17, 2020 to June 2, 2020.

The General Assembly not the Governor is vested with the sole authority to cancel, postpone, or extend a Presidential Primary, pursuant to Ohio Revised Code 3501.01(E)(2) as mandated

by Article I, Section 4 of the United States Constitution and Article II, Section 27 of the Ohio Constitution. During the aforementioned press conference, Governor DeWine stoked fear by recklessly stating the following, "We cannot conduct this election tomorrow." As a result, Governor DeWine through the color of his office caused serious public inconvenience, alarm, and fear and thus disenfranchised millions of electors of their freedom of choice and constitutional and statutory right to vote in person at their polling location on March 17, 2020. Governor DeWine also coerced electors not to vote in the President Primary Election even after Judge Richard Frye of the Franklin County Court of Common Pleas ruled that changing the date of the election was the sole province of the General Assembly.

Further, Governor DeWine under the color of his office and through association and collusion with former Director Amy Acton and Interim Director Lance Himes of the Department of Health ordered through official action the closing and/or restriction of private businesses, which closure orders are beyond the quarantine and isolation powers granted to the Ohio Department of Health by Ohio Revised Code 3701.13. These orders of engaging in a pattern of corrupt activity have created public inconvenience, alarm, and fear in the citizens of Ohio by depriving them of their constitutional rights protected under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution. These official actions by Governor DeWine have resulted in record-high unemployment, causing not only increased poverty, depression, despair, fear, and suicides, but also the necessity for state and local government budget cuts impacting schools and social programs.

Governor DeWine has also held private businesses and their corresponding licenses hostage through the use of coercion by subordinate government officials to enforce his arbitrary and unlawful orders. Since at least March 2020, over 790,000 individuals have filed for unemployment benefits totaling over \$6 billion dollars in economic harm to the taxpayers of Ohio due to these unconstitutional executive and administrative orders. Additionally, thousands of private businesses have been forced to shut down and layoff their employees causing serious public inconvenience, alarm, and fear costing the citizens of Ohio billions of dollars in direct and indirect economic harm due to lost wages and salaries.

Additionally, Governor DeWine has demonstrated grotesque discrimination against the medical health and welfare of the general population of Ohio by denying nonemergency healthcare, by which discrimination resulted in needless fear, suffering, worsening of treatable conditions, increased poverty due to the higher cost of delayed treatment, increased depression, increased despair, and increased suicides. Governor DeWine's official actions of engaging in a pattern of corrupt activity, through orders associated with, planned, and enforced by the Department of Health, have caused serious public inconvenience, alarm, and fear. As a result, millions of Ohioans were deprived of their constitutional right to purchase health care under Article I, Section 21 (B) of the Ohio Constitution. Additionally, under threat of credible criminal prosecution of a second-degree misdemeanor carrying a ninety-day jail sentence and/or a fine of \$750, Ohioans were prohibited from purchasing healthcare in violation of Article I, Section 21 (C) of the Ohio Constitution.

Due to these executive and administrative orders planned and authorized by Governor DeWine, thousands of individuals, who reside at Ohio government administered healthcare

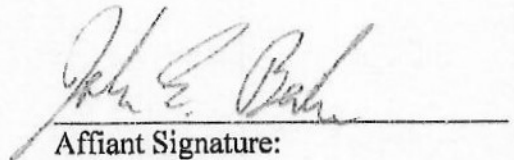
facilities such as skilled nursing homes, have suffered continuous neglect through forced isolation and fear which has exacerbated their already serious medical conditions.

Since at least March 2020 and to present, Governor DeWine has intimidated, coerced, and caused serious public inconvenience, alarm, and fear by unlawfully placing nearly 12 million Ohioans (effectively) under house arrest and to wear facial coverings, subject to government-approved exceptions, thereby violating millions of Ohioans's legal freedoms of association and civil liberties and due process rights under threat of credible criminal prosecution of a second-degree misdemeanor carrying a ninety-day jail sentence and/or a fine of \$750.

According to the Ohio Constitution, Article I, Section 10a(D), your Affiant is a victim and "a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act."

Lastly, since this affidavit charges felony offenses and pursuant to Ohio Revised Code 2935.10(A), this court shall "(1) issue a warrant for the arrest of the person charged in the affidavit, or (2) refer the matter to the prosecuting attorney for investigation." See *State v. Fraley*, 2020-Ohio-3763, citing *State ex rel. Brown v. Nusbaum*, 2017-Ohio-9141. Ohio Revised Code 2935.10(A) mandates that this court cannot summarily dismiss the affidavit. See *Hicks v. State*, 2018-Ohio-5298.

Further Affiant Sayeth Not.

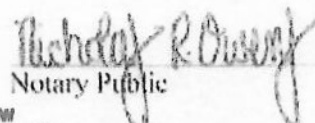


Affiant Signature:
John Becker
925 Locust Lane
Cincinnati, Ohio 45245

Sworn to and subscribed before me by John Becker on
the 20th day of September, 2020.



NICHOLAS RYAN OWENS, Attorney at Law
Notary Public, State of Ohio
My Commission Has
No Expiration Date
Section 147.03



Notary Public

Clermont

County, State of Ohio

My Commission Expires NEVER

September 28, 2020

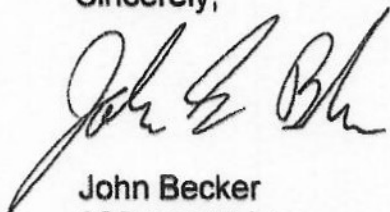
The Honorable Tim Rudd
Clerk of Courts
Clermont County Municipal Court
4430 State Route 222
Batavia, Ohio 45103

Dear Clerk Rudd:

I am requesting that you officially file my private citizen affidavit concerning Governor Mike DeWine on the court's docket and immediately forward it to the Administrative Judge of the Clermont County Municipal Court for its prompt review.

If you have any questions please do not hesitate to contact me.

Sincerely,



John Becker
925 Locust Lane
Cincinnati, Ohio 45245
513-753-6440 (voice only)

From: Haley, Jennifer
Sent: Monday, September 28, 2020 3:44:23 PM (UTC-05:00) Eastern Time (US & Canada)
To: Rudd, Tim
Cc: Faris, Vince; Faris, Vince; Haley, Jennifer
Subject: Vince Faris Email: Re: Private Citizen's Affidavit, filed September 28, 2020 by John Becker

September 28, 2020

Dear Mr. Rudd:

You had previously sent for my review of a Private Citizen's Affidavit, that is file stamped September 28, 2020. That affidavit has been signed by John Becker. This affidavit alleged a number of criminal violations against Governor R. Michael DeWine.

I have reviewed the paperwork and do not find a basis for the filing of a complaint pursuant to this Private Citizen's Affidavit.

I am returning the paperwork that you had previously forwarded to me.

Regards,

D. Vincent Faris

Clermont County Prosecutor
76 South Riverside Drive, 2nd Floor
Batavia, Ohio 45103
(513) 732-7313
Fax (513) 732-7592
vfaris@clermontcountyohio.gov

DVF/jlh

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RE: Public Records Request

Ramos, Ernie <eramos@clermontcountyohio.gov>

Thu 10/1/2020 10:40 AM

To: Nick Owens <nick@nickowenslaw.com>

Mr. Owens:

This is the response to your September 30, 2020 at 1:46 P.M. email requesting information. The investigation included a thorough examination of the allegations in the affidavit Mr. Becker filed and the relative criminal statutes however there are no records that are responsive to a public records request.

Ernie Ramos

G. Ernie Ramos, Jr.
 Chief Assistant Prosecuting Attorney
 Civil Division
 101 E. Main Street
 Batavia, Ohio 45103
 Phone: (513) 732-7899
 Fax: (513) 732-8171
 Email: eramos@clermontcountyohio.gov

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From: Nick Owens <nick@nickowenslaw.com>
Sent: Wednesday, September 30, 2020 1:46 PM
To: Ramos, Ernie <eramos@clermontcountyohio.gov>
Subject: Re: Public Records Request

Ernie,

Thank you for the prompt response to my client's public record request. I have two follow-up questions.

Does Prosecuting Attorney Faris and/or his office consider my client's filed private citizen affidavit against Governor DeWine a closed matter?

Secondly, can you confirm that the Clermont County Prosecuting Attorney's Office did not create and/or produce any investigatory records as a result of my client's filed private citizen affidavit?

Again, thank you for your prompt response to my client's public record request. It is much appreciated.

Nick Owens

From: Ramos, Ernie <eramos@clermontcountyohio.gov>
Sent: Wednesday, September 30, 2020 1:26 PM
To: Nick Owens <nick@nickowenslaw.com>
Subject: FW: Public Records Request

Mr. Owens:

This is the response to your September 30, 2020 10:15 A.M. public records request directed to Vince Faris in which you asked for: "All records relating to the private citizen affidavit filed by John Becker involving Governor Mike DeWine. This request includes but is not limited to all correspondence, specifically, email communications between Clermont County Municipal Court Clerk Tim Rudd and/or any media entities. "

Attached you will find the following:

The Affidavit filed by Mr. Becker;
The September 29, 2020 email from Vince Faris to the Clermont Sun;
The September 28, 2020 email from Vince Faris to Clerk Rudd;
The September 28, 2020 letter from Mr. Becker to Clerk Rudd.

Ernie Ramos

G. Ernie Ramos, Jr.
Chief Assistant Prosecuting Attorney
Civil Division
101 E. Main Street
Batavia, Ohio 45103
Phone: (513) 732-7899
Fax: (513) 732-8171
Email: eramos@clermontcountyohio.gov

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From: Nick Owens <nick@nickowenslaw.com>
Sent: Wednesday, September 30, 2020 10:15 AM
To: Faris, Vince <vfaris@clermontcountyohio.gov>
Subject: Public Records Request

Prosecuting Attorney Faris:

On behalf of my client John Becker, I am hereby requesting the following public records from the Clermont County Prosecuting Attorney's Office pursuant to Ohio Revised Code (ORC) 149.43(B):

All records relating to the private citizen affidavit filed by John Becker involving Governor Mike DeWine. This request includes but is not limited to all correspondence, specifically, email communications between Clermont County Municipal Court Clerk Tim Rudd and/or any media entities.

I am requesting these records via electronic format.

Thank you in advance of my request. If you have any questions regarding my public records request please do not hesitate to contact me via my cell phone at (513) 706-2634.

Nick Owens

The Law Office of Nicholas R. Owens

Email: nick@nickowenslaw.com

Phone: (513) 706-2634