IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

George Dunning, *et al.*,	:	Case No.: 1:14CV932
Plaintiffs,	:	Judge Michael R. Barrett
vs.	:	
Judith A. Varnau, *et al.*,	:	**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT BROWN COUNTY'S MOTION TO DISMISS AMENDED COMPLAINT**
Defendants.	:	

I. Introduction

Notice pleading is all that is required of any complaint. In its motion to dismiss, Defendant Brown County spins the allegations of the amended complaint to reflect an "inadequate investigation" of the Coroner's Office that resulted in "unflattering statements about Plaintiffs regarding the cause of Mr. Goldson's death." ECF 12, p.3, 6. Suddenly, accusing someone of murder, and ensuring that it gets published in the media, has become an "unflattering statement."

While the reported cause and manner of Goldson's death is being challenged, the allegations against the Brown County Coroner's Office go far beyond those that Defendants chose to outline in the *Jorg*[1] case. The inquest efforts and publication of misleading factual content on the Brown County Coroner's official website and to the media were not actions compelled by any state law mandate. These were instead policy decisions made by the Coroner's Office that resulted in the deprivation of Plaintiffs' due process rights. Viewed in the light most favorable to Plaintiffs, the Complaint's allegations support all the elements required of a due process claim. Defendant's Civ. R. 12(b)(6) motion must be denied.

[1] *Jorg v. City of Cincinnati*, 145 Fed.Appx. 143 (6th Cir. 2005)

II. The factual allegations of the amended complaint support a Section 1983 claim against Brown County.

As Defendant Brown County's motion challenges the sufficiency of the pleadings, the facts alleged in the Amended Complaint are presumed to be true, and they should be construed in a manner most favorable to Plaintiffs. *Meador v. Cabinet for Human Resources*, 902 F.2d 474, 475 (6th Cir.), *cert. denied*, 111 S.Ct. 182 (1990).

Defendant Judith Varnau, D.O. ("Dr. Varnau"), is the elected coroner of Brown County, Ohio. ECF 10, ¶3, 13. Her husband, Defendant Dennis Varnau ("Mr. Varnau"), is an official subordinate of Dr. Varnau. *Id.*, ¶4. Mr. Varnau spent four years' worth of bitter litigation efforts to supplant Dwayne Wenninger as Brown County Sheriff. *Id.*, ¶9-12. Since losing this battle, the Varnaus have shared an intense hatred for the Sheriff's Office and its employees. *Id.*, ¶12. Dr. Varnau has sought, and continues to seek, to exercise her statutory discretion as coroner, in whatever way furthers her and her husband's ambition of disparaging and injuring as many Sheriff's Office employees as possible. *Id.*, ¶14-15.

One such example of Dr. Varnau's exercise of coroner discretion against the Sheriff's Office involves the death of Zachary Goldson. Plaintiffs found Goldson hanging from a bed sheet wrapped around a steel pipe in a Brown County jail cell on October 5, 2013. *Id.*, ¶17, 41. Dr. Varnau investigated the scene soon immediately thereafter. Over time, she and Mr. Varnau learned much about Goldson's mental instability related to things such as: (1) his assault of Deputy Travis Justice (*Id.*, ¶4.); (2) the numerous felony charges he was facing (*Id.*, ¶19); (3) his consumption of multiple indigestible objects (*Id.*, ¶20); and most importantly, (4) Goldson's self-described depressive state that he wrote about in letters to others and mentioned to friends and family (*Id.*, ¶52). Nevertheless, the Varnaus deliberately excluded these facts from their reports, as these facts tend to support the notion that Goldson committed suicide. *Id.*, ¶53.

In addition, an autopsy of Goldson's body by the Montgomery County Coroner's Office revealed signs of injury that were consistent with Goldson having hung himself. *Id.*, ¶34. Dr. Kent Harshbarger, the Montgomery County Coroner, found the cause of death to be hanging by the neck. *Id.*, ¶35. However, Dr. Varnau – who lacks any anatomical or forensic pathology experience or training – became so obsessed with Plaintiffs' criminal liability that she successfully lobbied Dr. Harshbarger to change or remove any reference to suicide from his report. *Id.*

The Varnaus instead set out only to report certain alleged facts that they believe support their theory that Plaintiffs murdered Goldson. In a series of what they dubbed "official story mismatches," the Varnaus set out to debunk Plaintiffs' accounts of the circumstances surrounding Goldson's death. *Id.*, ¶51. Such mismatches include: that Goldson could not have reached far enough to affix the bed sheet to the sprinkler head (*Id.*, ¶42); the sprinkler head could only bear up to 40 pounds of weight (*Id.*, ¶41); the lack of bending deformation of the escutcheon plate (*Id.*, ¶43); the need for a ladder to tie the knots in the bedsheet around the sprinkler head (*Id.*, ¶44); the lack of time Goldson had to complete the hanging (*Id.*, ¶45); the matrix pattern imprint allegedly seen on Goldson's neck consistent with a nylon strap (*Id.*, ¶50); and the attempted cover-up by Plaintiff John Schadle when he supposedly replaced the sprinkler head and erased video footage in an effort to destroy evidence (*Id.*, ¶47, 59). Dr. Varnau ultimately certified that Goldson was strangled to death, mostly likely by a hobble strap. *Id.*, ¶39.

Many of the above "official story mismatches" were republished in presentations to the grand jury and to countless others. *Id.*, ¶51, 57. These presentations are replete with capitalized, underlined, and colored fonts intended to highlight those facts the Varnaus believe are evidence of Plaintiffs' guilt. *Id.* The Varnaus then widely distributed their presentations and reports to members of the press in an effort to garner public support for their theory. *Id.*, ¶59-61. They sent dozens of emails to the Ohio Bureau of Criminal Investigation while BCI was investigating Goldson's death,

hoping to convince the agency of Plaintiffs' criminal involvement. *Id.*, ¶62-66. And they voluntarily publicized their death investigation findings on the Brown County Coroner's official website: www.varnau.us. *Id.*, ¶70.

As a result of the efforts made by the Varnaus to blame Goldson's murder on Plaintiffs, Plaintiffs are referred to in the community as "the Death Squad." *Id.*, ¶81. Residents of Brown County and beyond distrust Plaintiffs, are uncooperative with Plaintiffs' law enforcement activities, and have labeled them as murderers, manipulative and corrupt. *Id.* Children of Plaintiffs report being harassed at school by their peers and are greatly upset over the false allegations of murder faced by their fathers. *Id.* In addition, Plaintiffs have been impeded in performance of their public duties as law enforcement officers of Brown County, and some have been pressured through circumstances at work to find employment elsewhere. *Id.*, ¶85-86. For example, since the filing of the Complaint, Plaintiff John Schadle has resigned from the Brown County Sheriff's Office due to Brown County policies and customs, including those of the coroner.

III. Procedural Posture

Plaintiffs filed this Section 1983 action against the Varnaus and Brown County on December 4, 2014, for deprivation of their due process rights. ECF 1. Supplemental state claims alleged therein include claims for defamation and amendment of the coroner's verdict that Goldson's death resulted from a "homicide" by "strangulation." *Id.* Plaintiffs can simultaneously file a common law action and a supplemental 1983 claim arising from the same set of facts. *Braley v. City of Pontiac*, 906 F.2d 220, 223 (6th Cir.1990). The complaint was timely amended to include new facts regarding the no bill and report returned by the grand jury. ECF 10.

Defendant Brown County now moves to dismiss the amended complaint under Rule 12(b)(6) because Dr. Varnau supposedly does not set official policy for the coroner's office. ECF

12, ¶5. Even if she does, the county argues, Plaintiffs have not alleged a policy that resulted in the violation of their due process rights. ECF 12, ¶7-8. However, these arguments are misguided.

Dr. Varnau is the elected coroner of Brown County, and really the only person authorized to proscribe policy for the coroner's office. She is not the prosecutor, although she clearly took on the role of a coroner demanding that the prosecutor see it her way against the Plaintiffs in this case. She can delegate her policymaking authority to office personnel, and any actions taken in furtherance thereof are still potentially actionable for Section 1983 purposes. Moreover, the actions taken by the Varnaus deprived Plaintiffs of liberty and property interests in their employment as law enforcement officers in violation of their due process rights. Accordingly, Defendant Brown County's motion to dismiss must be denied.

IV. Argument

A. The low burden to defeat a Civ. R. 12(b)(6) motion.

A complaint need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief" to provide fair notice to the defendant of each claim and grounds upon which it rests. Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Rule 8 provides a notice pleading standard, which "relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." *Id.*; citing *Conley v. Gibson*, 355 U.S. 41, 47-48 (1957). Rule 8(a) establishes a pleading standard irrespective of the merits of complaint, which need not perfectly state the legal theories supporting the claims asserted therein. *Johnson v. City of Shelby, Miss.*, 135 S.Ct. 346, 346-347 (2014).

When considering a Rule 12(b)(6) motion, the complaint must be construed in the light most favorable to the plaintiff, and all material allegations must be accepted as true. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). A motion to dismiss must be denied if the complaint "contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Courie v. Alcoa*

Wheel & Forged Products, 577 F.3d 625, 629-630 (6th Cir.2009). The complaint has facial plausibility if it contains either direct or inferential allegations with respect to all material elements necessary to sustain a recovery under some viable legal theory. *Allard v. Weitzman*, 991 F.2d 1236, 1240 (6th Cir.1993).

Plaintiffs' amended complaint meets all the above requirements. As identified by Brown County in their motion to dismiss, the amended complaint provides fair notice of Plaintiffs' claims (i.e., violations of substantive and procedural due process, defamation, conspiracy, and amendment of the coroner's verdict). Fair notice of the grounds upon which these claims are based is also provided – namely the drafting of Defendants' reports and the manner in which they were published pursuant to their official discretion – and the adverse effects Plaintiffs have suffered as a result.

This case presents more than Dr. Varnau's misuse of her power to advance a private agenda. As the coroner, Dr. Varnau adopted a policy and custom of publicly accusing Plaintiffs of murder through use of the coroner's web page, and the press. She developed a policy and custom of using the coroner's office, through its web pages and releasing information to the press, for a dual purpose. First, she sought to solicit information from outside sources to reinforce her preconceived conviction of the Plaintiffs in this case, and second, she sought to slander and ruin the careers of the Plaintiffs in this case in the event her official efforts were unsuccessful as to the first. Dr. Varnau's decisions to adopt a policy and custom of using the coroner's office, through its web pages and releasing information to the press, were final and unreviewable, and were not constrained by the official policies of superior officials.

Because notice pleading remains the standard by which complaints are judged, Brown County's motion should be denied.

B. Sufficient allegations exist to find that Defendants violated Plaintiffs' due process rights for purposes of their Section 1983 claim.

1. Dr. Varnau is vested with statutory authority to set official policies for the Brown County Coroner's Office.

Bringing a 1983 claim simply requires (1) state action that (2) deprived someone of a federal constitutional or statutory right. See *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). A county may be liable under Section 1983 where the constitutional injury results from (1) a longstanding custom or practice that has become standard procedure; (2) the execution of a policy or decision made by an official with final policymaking authority; or (3) by showing the official with final policymaking authority either delegated that authority to, or ratified the decision of, a subordinate. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978); *Pembaur v. Cincinnati*, 475 U.S. 469, 484 (1986).

"Policy" refers to a course of action from among other alternatives. *Oklahoma City v. Tuttle*, 471 U.S. 808, 823 (1985). This means that a single act can constitute official government policy for which the municipality can be held liable. *Pembaur*, 475 U.S. at 480. Whether an official is a policymaker poses a question of state law to determine the authority vested by state or local laws. *St. Louis v. Praprotnik*, 485 U.S. 112, 126 (1988). However, state law will not "always speak with perfect clarity" on the subject. *Id.* Dr. Varnau is a county official who is authorized to establish the final, official policy of Brown County with respect to all matters concerning coroner investigations. See *Brotherton v. Cleveland*, 173 F.3d 552, 562 (6th Cir.1999).

R.C. 313.07 provides for the establishment of the Coroner's Office. In the performance of her duties as Brown County Coroner, Dr. Varnau, with the technological assistance of Mr. Varnau, saw fit to establish a virtual office on the internet at varnau.us. The Varnaus use the website to post everything from their views on Christianity to Dr. Varnau's conversations with Prosecutor Jessica Little. Dr. Varnau used the website, absent any legal mandate or prohibition, to promote certain

misconstrued facts obtained through her statutory authority to inquire into Goldson's death, and to accuse innocent people of causing or covering up the cause of that death.

In addition, when the coroner feels the autopsy results are not determinative of how the person died, she can respond by soliciting other sources of information as part of her investigation. R.C. 313.17. Such investigations are not simply fact-finding missions, as coroners are vested with considerable discretion to determine which tasks are necessary to investigate a death. *See generally*, R.C. 313.11, R.C. 313.13, and R.C. 313.17. The absence of statutory direction in how a coroner carries out these tasks gives rise to an implied authority to reasonably carry out the manner and method of performing these duties. *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 12 (1915).

The Varnaus disagreed with the autopsy findings made by the Montgomery County Coroner's Office. In response, they solicited information related to Goldson's death through a "coroner inquest page" on varnau.us, which shows Dr. Varnau's desire to exercise her authority under R.C. 313.17. Dr. Varnau also has the authority to decide what deaths to investigate, and when and how she disseminates any facts or circumstances regarding those investigations. She has chosen in this case to do so through a preconceived and premeditated manner that accuses innocent law enforcement officers of crimes, and violates Plaintiffs' constitutional rights. As the Varnaus' decision to promote her accusations as the coroner, and to maintain the website and its content reflect policy decisions of the coroner's office, constitutional injuries therefrom appropriately form the basis for a Section 1983 claim.

Defendants liken this case to *Jorg*[2] because the cases involve allegations of "inadequate investigations" by coroners who issued false opinions regarding the cause and manner of death. ECF 12, p. 6. This analogy, however, grossly mischaracterizes the claims against Dr. Varnau and her husband to achieve the County's goal of dismissal. For starters, the Varnaus stand accused of

[2] *Jorg v. City of Cincinnati*, 145 Fed.Appx. 143 (6th Cir. 2005)

violating Plaintiffs' constitutional rights primarily for actions they took ***after*** issuing the cause and manner of Goldson's death – and beyond any ministerial duty imposed by statute. Moreover, the Varnaus are not accused of acting to appease any members of a protected class like the coroner in *Jorg*. The Varnaus are accused of willfully and maliciously taking actions they believe are within their discretion to portray Plaintiffs as murderers as part of the Varnaus' vendetta against the Sheriff's Office. The policy decisions made by the Varnaus to continue investigating Goldson's death and publicly disparage Plaintiffs in the process makes *Jorg* inapplicable to the case at bar.

It should be noted that Plaintiffs' Section 1983 claim is sufficient to withstand a motion to dismiss even if the claim is "nothing more than a legal conclusion couched as a factual allegation." ECF 12, p. 5; *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 624 (9th Cir.1988). The Supreme Court upheld the Ninth Circuit's bare allegation standard regarding Section 1983 claims in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 165 (1993). *Leatherman* rejected the Fifth Circuit's heightened pleading requirement for *Monell* claims as discordant with the liberal system of notice pleading under Rule 8(a) of the Federal Rules of Civil Procedure.

2. The Coroner's customs or policies were the moving force behind the violations of Plaintiffs' constitutional rights.

A county is liable under Section 1983 when the county has a policy or custom that was a moving force behind the deprivation of a federal right. *Monell*, *supra*, 436 U.S. at 694. Any immunity defenses that could be asserted by the officials in question are unavailable in an official-capacity action. *Owen v. City of Independence*, 445 U.S. 622 (1980).

Under the Fourteenth Amendment, "[n]o State shall…deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. A due process violation can occur procedurally or substantively. *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir.2012). A procedural due process violation occurs where the process afforded by the government

before making its decision fails to afford fair notice or an opportunity to be heard in a meaningful manner. *Howard v. Grinage*, 82 F.3d 1343, 1349 (6th Cir.1996). Conversely, substantive due process refers to "[t]he doctrine that governmental deprivations of life, liberty or property are subject to limitation regardless of the adequacy of the procedures employed." *Pearson v. City of Grand Blanc*, 961 F.2d 1211.

Plaintiffs have alleged sufficient facts to establish claims for deprivation of property and liberty rights without due process. Plaintiffs assert a property right based on the hostile community behavior towards Plaintiffs in the exercise of their law enforcement duties caused by the Varnaus' efforts to pin responsibility for Goldson's death on Plaintiffs. This public perception has adversely affected some plaintiffs from obtaining employment elsewhere. Some plaintiffs have further been subjected to harsher working conditions in an apparent effort to interfere with their freedom to earn a living and maintain their employment with the Brown County Sheriff's Office. Plaintiff John Schadle has already left the Brown County Sheriff's employment. These injuries, caused by the false accusations, and policies established by the Varnaus through the coroner's office, are sufficient to state a claim for relief under Section 1983 and the fourteenth amendment for deprivation of due process. See *Lentsch v. Marshall*, 741 F.2d 301, 303-304 (10th Cir.1984).

This is truly a case of first impression. Plaintiffs' counsel has yet to find any case law that truly illustrates similar circumstances to those posed by this case. It is difficult to imagine any coroner, in any county, in any state that would exercise his or her discretion with the same unyielding penchant for vengeance as the Varnaus. Brown County tries to draw parallels between this case and *Callihan*[3] and *Mitchell*[4] because these cases involve "the failure of a coroner to conduct an adequate investigation." ECF 12, p.10. But for reasons already stated above, Brown County's gross mischaracterization of the allegations is neither accurate nor helpful for their 12(b)(6) motion.

[3] *Callihan v. Sudimack*, 117 F.3d 1420 (6th Cir.1997).

More accurate parallels can be drawn from the case of *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1126 (9th Cir.2002). In *Galbraith*, Josephine Galbraith hanged herself in a home she shared with her husband, Nelson. She had a known history of depression, told family members she wanted to die, and eventually strangled herself by double-knotting a sash around her neck. Law enforcement officials believed Josephine committed suicide based on the absence of scattered blood, defensive wounding, or any indication of struggle at the scene. However, the county coroner (Dr. Ozoa) concluded that Josephine had been strangled. Despite an apparent lack of injury to her neck, Dr. Ozoa found the cause of death was asphyxia due to ligature strangulation by an assailant because Josephine was not strong enough to tie the sash herself. The report also stated that Nelson was the only other person in the house when she died. These findings were used to charge Nelson with his wife's murder, but a jury ultimately acquitted him.

After his acquittal, Nelson sued Dr. Ozoa and Santa Clara County for violating his Fourth and Fourteenth Amendment rights under Section 1983. The district court granted the county's motion to dismiss after applying a heightened pleading standard to the allegations that Dr. Ozoa falsified his findings regarding Josephine's death. On appeal, the Ninth Circuit reversed the judgment. After citing *Leatherman*, *supra*, and its progeny to explain why heightened pleading standards are no longer used regarding Section 1983 claims, the court held that "a coroner's reckless or intentional falsification of an autopsy report that plays a material role in the false arrest and prosecution of an individual can support a claim under Section 1983." *Galbraith*, 307 F.3d at 1126. The *Galbraith* Court also found that Nelson's bare allegation that Dr. Ozoa's misconduct conformed to county policy sufficed to state a *Monell* claim against the county. However, since Nelson's injury focused on pretrial deprivations of liberty, the specific protections of the Fourth Amendment

[4] *Mitchell v. McNeil*, 487 F.3d 374, 378 (6th Cir.2007).

trumped the general protections of substantive due process, thus leading to the dismissal of the due process claims only.

Following the rationale of *Galbraith*, *supra*, a Section 1983 claim must exist against a local official who improperly exerts pressure, knowingly provides misinformation, conceals exculpatory evidence, or otherwise engages in wrongful or bad faith conduct that injures another person. See *Awabdy v. City of Adelanto*, 368 F.3d 1062 (9th Cir.2004). The Varnaus sent dozens of emails to the BCI in an attempt to convince the agency of Plaintiffs' involvement in Goldson's death. The Varnaus exerted pressure on Dr. Harshbarger to amend his autopsy findings. The Varnaus deliberately withheld from their reports any facts that might support the theory that Goldson hanged himself. Lastly, the Varnaus corresponded numerous times with the Attorney General's office and Special Prosecutor Daniel Breyer with the intent to affect the bringing of charges against Plaintiffs. And finally, the Varnaus publicly accused the Plaintiffs of the murder, or assisting in its cover up. It should be assumed at this early stage that, but for the statements and reports issued by the Varnaus, a grand jury never would have been convened to even consider bringing charges against Plaintiffs.

As it has been shown that the Coroner's customs or policies were the moving force behind the violations of Plaintiffs' constitutional rights, Defendant's motion should be denied.

3. Plaintiffs' Section 1985 count should remain in place absent a ruling from the court as to whether both Varnaus acted within their authority.

Since Brown County argues a Section 1985 cause of action cannot exist absent a valid Section 1983 claim, this argument should also be overruled. Sufficient factual allegations exists as to the Varnaus' conspiratorial acts to deprive Plaintiffs' of their constitutional rights that the claim should be allowed to stand.

While Plaintiffs do not dispute that a corporation generally cannot conspire with its own agents or employees, the intra-corporate conspiracy doctrine does not apply, among other reasons,

where employees act outside the course and scope of their employment or exceed the reach of legitimate corporate activity. *Johnson v. Hills & Dales General Hosp.*, 40 F.3d 837, 841 (6th Cir.1994). There is no need at this early juncture to determine whether Dr. Varnau or Mr. Varnau were acting on behalf of the coroner's office or rather for personal reasons. See *Kinkus v. Village of Yorkville*, 476 F.Supp.2d 829 (S.D.Ohio 2007) (finding that whether the officers acted within their scope of employment regarding their liability under Section 1985 was for the jury to decide). The jury demanded in this action should likewise be tasked with making such a finding regarding the conspiratorial actions taken by the Varnaus.

C. Brown County is not entitled to Ohio's political subdivision immunity.

1. The County is not entitled to immunity.

Brown County claims it has no liability for Plaintiffs' state claims because it is entitled to immunity under R.C. 2744.02. But R.C. 2744.09(E) completely removes Chapter 2744 from applying towards:

> (E) Civil claims based upon alleged violations of the constitution or statutes of the United States, except that the provisions of section 2744.07 of the Revised Code shall apply to such claims or related civil actions.

Because Defendants face Section 1983 and 1985 liability for violating Plaintiffs' due process rights, Chapter 2744 cannot statutorily apply to shield Brown County from liability.

Even if Plaintiffs could only proceed in this action on their state claims, Chapter 2744 still does not afford immunity to the county here. While R.C. 2744.02(A)(1) establishes general immunity for the County, the second tier lists several exceptions to immunity under R.C. 2744.02(B). One such exception, R.C. 2744.02(B)(2), states that a county is liable for the injury or loss to person or property caused by its employees' negligent conduct "with respect to proprietary functions of the political subdivision." A proprietary function involves an activity the county is not required under law to perform that is "customarily engaged by nongovernmental persons." R.C.

2744.01(G)(1)(b); *Greene Cty. Agricultural Soc. V. Liming*, 89 Ohio St.3d 551, 559-561 (Ohio 2000). Creating and maintaining a website that publicly displayed defamatory content was one proprietary function engaged in by the Coroner's Office. Another includes drafting and disseminating defamatory presentation materials through the coroner's web site and through the press with the intent to convince the special prosecutor, the grand jury, and the world to wrongfully charge and convict Plaintiffs with murder.

While Brown County casts Plaintiffs' state law claims as intentional tort claims, a defamation claim in Ohio can be either negligent or intentional. *Price v. Austintown Local School Dist. Bd. of Edn.*, 178 Ohio App.3d 256, ¶ 25 (7th Dist.2008). Facts produced through discovery may establish that the Varnaus' conduct was negligent rather than intentional. Since Brown County may be held liable for the negligent acts and constitutional violations carried out by the Varnaus, the county's motion to dismiss the state claims against it should be denied.**CONCLUSION**

For all the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant Brown County's motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ John H. Phillips
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