COURT OF COMMON PLEAS
CIVIL DIVISION
BROWN COUNTY, OHIO

GEORGE DUNNING, et al.,	)	**CASE NO. CVH 2015-0001**
	)	Judge Scott T. Gusweiler
Plaintiffs,	)	**DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR TO DISMISS COMPLAINT and/or TRIAL BRIEF**
vs.	)	
JUDITH A. VARNAU	)	
Defendant.	)	

Defendant, JUDITH A. VARNAU, pursuant to Civ. R. 11, 12(B)(6), 12(C), and/or 12(F), moves to dismiss the Complaint and all pending motions in the case, and vacate all orders relating to it; and submits the following Memorandum in support, and to further assist the court in addressing the issues before the court. Counsel states that:

1) Plaintiffs have no legal standing to challenge the acts, investigation, inquest, or determinations of a coroner on the cause, mode, and manner of death of a person who is essentially a stranger to them;

2) This court is without jurisdiction to hear an appeal from, or restrain or enjoin, the mere exercise of discretion in a statutory action of a coroner to determine a person's cause, mode, and manner of death;

3) Plaintiffs may not split causes of action relating to the same subject matter into two separate proceedings, which they have done by their own admission by filing an action in Federal court and separately this case on the same subject matter.

THOMAS G. EAGLE CO., L.P.A.
3386 N. State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

4) There is nothing alleged in the Complaint or the Motion that is any "gross" abuse of discretion as Plaintiffs are required to prove;

5) Plaintiffs should be estopped from preventing the Coroner from seeking the same information that the Plaintiffs themselves have asked for – and strangely enough successfully obtained from the Sheriff's office without contest.

I. Introduction and Summary

As the Complaint in this case alleges (and for the purposes of this Motion the facts are assumed to be true, although the legal conclusions are not), Zachary Goldson died while in custody in the Brown County Jail. None of these Plaintiffs are in any way related to Mr. Goldson. The Brown County Coroner is statutorily charged with the duty, the responsibility, and the right, to determine the cause, manner, and mode of his death, and *all circumstances* attendant to it.

In performing that duty the Coroner has exercised statutory and discretionary powers to obtain information and assistance of others in making that determination. In the course of doing that these Plaintiffs filed a suit in Federal Court, alleging, among other things, complaints about the Coroner's investigation of the Goldson death, and expressly including a claim to challenge the coroner's initial determination (see copy of that complaint attached, which is referenced in Plaintiffs' Complaint in this case). This case also presents the same issues, and others, but both have one common core: these Plaintiffs' complaints challenging the Brown County Coroner's investigation, past, present, and future, of the death of Zachary Goldson – a stranger to them.

This case further seeks to restrain what Plaintiffs admit is the mere exercise of or at worst an "abuse of discretion" afforded to the coroner; relying on (among other things)

THOMAS G. EAGLE
CO., L.P.A.
3386 N State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

the notion that merely certifying a cause of death is an "inquest," and that once that is done no additional, further, or initial "inquest" can be done – a notion that the court may have assumed is true but is without legal support (that this counsel can find).

II. Law and Argument

A. Standard for review

Judgment on the pleadings is appropriate under Civ.R. 12(C) "where a court (1) construes the material allegations in the [in this case, the Complaint], with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that they [here, all of the Plaintiffs] could prove no set of facts in support of [their] claim that would entitle [them] to relief." *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996). See also, *Liberty Retirement Community v. Hurston,* 12th Dist. Butler No. CA2013-01-006, 2013-Ohio-4979, ¶ 7.

To dismiss a complaint for failure to state a claim under Civ.R. 12(B)(6) it must appear beyond a reasonable doubt from the complaint that the claimants can prove no set of facts entitling them to recovery. *LeRoy v. Allen, Yurasek & Merklin*, 114 Ohio St.3d 323, 2007-Ohio-3608, ¶ 14, 872 N.E.2d 254. The Complaint must contain either direct allegations on every material point necessary to sustain a recovery on any legal theory, "or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." *Sexton v. Mason*, 12th Dist. Warren No. CA2006-02-026, 2007-Ohio-38, ¶ 25 (quotations omitted). To "constitute fair notice, the complaint must still allege sufficient underlying facts that relate to and support the alleged claim, and may not simply state legal conclusions." *Tuleta v. Med. Mut. of Ohio*, 8th Dist. Cuyahoga No. 100050, 2014-Ohio-396, ¶ 12, quoting *Grossniklaus v. Waltman*,

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

5th Dist. Holmes No. 09CA15, 2010-Ohio-2937, ¶ 26; *McWreath v. Cortland Bank*, 11th Dist. Trumbull No. 2010-T-0023, 2012-Ohio-3013, ¶ 40.

While the standard necessary to satisfy the requirements is low, "'simplified pleading under Rule 8 does not mean that the pleader may ignore the operative grounds underlying a claim for relief.'" *Tuleta*, 2014-Ohio-396 at ¶ 38 (quotations omitted).

Regarding the Plaintiffs' request for a preliminary injunction: "The right to an injunction must be clear and the proof thereof clear and convincing, and the right established by the strength of plaintiffs' own case rather than by any weakness of that of his adversary." *White v. Long*, 12 Ohio App.2d 136, 140, 231 N.E.2d 337 (1st Dist. 1967). In considering a preliminary injunction, the court considers whether "(1) the movant has shown a strong or substantial likelihood or probability of success on the merits, (2) the movant has shown irreparable injury, (3) the preliminary injunction could harm third parties, and (4) the public interest would be served by issuing the preliminary injunction." *Union Twp. v. Union Twp. Professional Firefighters' Local 3412*, 12th Dist. Clermont No. CA99-08-082, 2000 Ohio App. LEXIS 475, *6. An injunction is an equitable remedy that should be used only when an adequate remedy at law is not available. *Garono v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496 (1988).

"Each element must be established by clear and convincing evidence. Clear and convincing evidence is the measure or degree of proof more than a mere 'preponderance of the evidence,' but less than 'beyond a reasonable doubt' required in criminal cases, and which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Freeman Indus. Prods., LLC v. Armor Metal Group Acquisitions, Inc.*, 193 Ohio App. 3d 438, 444-445, 2011-Ohio-1995, 952 N.E.2d 543

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

(12th Dist.) (Quotations omitted).

B. Coroner Inquests (Generally)

R.C. 313.17 provides in part (emphasis added):

> The coroner . . . may . . . proceed to inquire how the deceased came to his death, *whether by violence to self or from any other persons, by whom, whether as principals or accessories before or after the fact, and all circumstances relating thereto.*

An initial determination of the cause of a death is required to be made, quickly, sometimes without full information, and is expressly allowed to be supplemented. R.C. 3705.16(C); O.A.C. 3701-5-07. The coroner may properly decide to hold an inquest when, "from such observation as [she] may be able to make, and from such information as may come to [her], the coroner is *for reasons of substance* led to *surmise or think* that the death has been so caused [by violence]." *State ex rel. Brown v. Bellows*, 62 Ohio St. 307, 310, 56 N.E. 1028 (1900) (emphasis added). The statutes do not, by the "manner and mode" language of R.C. 313.19, limit the coroner's statutory inquiry only to "physical and physiological mechanisms," and to "so state is to imply that R.C. 313.12's requirement to relate facts 'concerning the time, place, manner, and circumstances of the death' is essentially meaningless, as is the coroner's inquiry pursuant to R.C. 313.17 as to who caused the death, together with all attendant circumstances." *State ex rel. Blair v. Balraj*, 69 Ohio St. 3d 310, 312, 631 N.E.2d 1044 (1994). As the court described:

> Now, the statute under which the defendant [coroner] proposes to act does not disclose the exact circumstances or information sufficient to authorize him to hold an inquest; his authority is to be exercised within the limits of a sound discretion, and he can hold an inquest only "*when informed that the body of a person whose death is supposed to have been caused by unlawful or suspicious means has been found within the county.*"
>
> The law, therefore, vests in him a certain discretion to be exercised in an honest and faithful manner *to determine for himself whether the necessity for holding an*

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

inquest comes within the purview of the language of the statute.

The laws of the various states make different provisions with reference to the circumstances under which an inquest should be held, but the principles controlling are well set forth in 13 Corpus Juris, 1246:

> "The general rule under the statutes is that *it is the duty of the coroner to hold an inquest whenever there is reasonable ground to believe that a death was caused by violence or other unlawful means; and, of course, where he has abundant cause to believe that the death was so caused, his duty to act is clear.* Under some statutes a coroner may lawfully hold an inquest only on the bodies of such persons as may reasonably be supposed to have died by unlawful means, or where the cause of death is unknown. Conversely, under these statutes, if the cause of death is not doubtful, and there is no reason to suspect that it implicates any person, an inquest should not be held. Thus an inquest is unnecessary where it is quite evident that death has been caused by suicide, by pure accident, by an act of God, by negligence of the deceased, by disease, or by other natural causes."

State ex rel. Harrison v. Perry, 113 Ohio St. 641, 647-648, 150 N.E. 78 (1925) (citations omitted, emphasis added).

Once the facts exist ("there is reasonable ground to believe that a death was caused by violence or other unlawful means"), or cause a coroner to merely "surmise or think" that (the most deferential standard conceivable, less even than merely "some evidence"), and those grounds include when "the deceased came to his death, whether by violence *to self or from any other persons*" (R.C. 313.17, emphasis added), the coroner's discretion is absolute. That discretion does not exist only if those facts do not exist – there is no reasonable ground to merely *believe* (to "surmise or think") the person died by violence to himself or from someone else. What more deferential standard can there be than merely to "surmise or think" something is true? But those facts do exist here and no one disputes that (that Goldson died by violent means, either by himself or from others). It is therefore the exercise of a "clear duty" that Plaintiffs seek to prevent.

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

The coroner's duty and authority is therefore explicit, and broad. R.C. 313.17:

> gives the coroner power to collect data pertaining to the cause of death *through means other than by formal inquest.* Such *an informal inquiry* can take place by questioning of anyone who may be in possession of information (medical history or otherwise) that would aid the coroner in the disposition of his duty.

1975 Op. Att'y Gen. No. 75-011, 2-42 (emphasis added). The Ohio Supreme Court expressly held the duties of a coroner to be both ministerial and quasi-judicial. See, *State, ex rel. Harrison, v. Perry*, 113 Ohio St. 641, at syl. 2. See also, *Owens v. Anderson*, 39 Ohio App. 3d 196, 530 N.E.2d 942 (2d Dist. 1987).

The full records of a law enforcement investigation is part of the "attendant circumstances," see R.C. 313.17, and *State ex rel. Blair v. Balraj*, 69 Ohio St. 3d at 312, and therefore fully within the statutory authority of the Coroner to demand. The right to so demand is expressly allowed to her, by statute. A coroner may *issue subpoenas* for witnesses, who can be committed to jail if they do not appear, by court order as with contempt. R.C. 313.17. The coroner's investigators may perform *any investigatory tasks* that are not limited to the authority of the coroner or the deputy coroner by R.C. 313.17 or another statute. 1988 Ohio Op. Att'y Gen. No. 035. The sheriff and other law enforcement *may be requested by the coroner to furnish more information* or make further investigation. R.C. 313.09. The BCII "shall assist" in the evaluation of evidence submitted by the coroner. R.C. 313.08(I). See also, 1988 Ohio Op. Att'y Gen. No. 035 (1988) (Pursuant to R.C. 313.17, a county coroner during an investigation to determine the cause of death of a person may perform any investigatory tasks that are not limited to the authority of the coroner or the deputy coroner by R.C. 313.17 or another statute, including to issue a subpoena that directs a private corporation to produce the person's medical records that are in the custody or possession of the corporation).

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

C. Lack of Standing

Civ.R. 17(A) requires that an action be brought in the name of a real party in interest, one who "is directly benefited or injured by the outcome of the case rather than merely having an interest in the action itself." *State ex rel. Sinay v. Sodders*, 80 Ohio St.3d 224, 226, 685 N.E.2d 754 (1997), citing *State ex rel. Massie v. Gahanna-Jefferson Pub. Schools Bd. of Edn.*, 76 Ohio St. 3d 584, 585, 669 N.E.2d 839 (1996). An injury "in fact" is one that is specific, traceable to the subject matter of the suit, and capable of being redressed by the court. Id. When an action is brought in relation to a specific statute or constitutional provision, the plaintiff must demonstrate that the interest he or she seeks to protect falls within the "zone of interests" that are protected or regulated. Id.

None of the Plaintiffs have any remedy that will benefit any of them in any way, either from a mere inquest, or from a change in the death certificate of a stranger to them. No result of any action by the Coroner will have any binding effect on any criminal or civil proceeding, and no Plaintiff will be civilly liable for anything, or criminally responsible for anything, that may come from a mere truth-finding inquest or a finding on a death certificate. See *State ex rel. Blair,* 69 Ohio St.3d at 314.

Plaintiffs appear to be concerned about some potential for implication of them in whatever inquiry is made or the result of it, or from the current death certificate. But, "[i]njury to reputation, standing alone, is not a liberty interest protected by the Fourteenth Amendment" and "defamatory publications, standing alone, do not rise to the level of a constitutional claim, no matter how serious the harm to reputation." *Mertik v. Bialock*, 983 F. 2d 1353 (6th Cir. 1993). There is also no legal right to a coroner investigation at all, so how can there be a right to prevent one? *Callihan v. Sudimack*, 117 F. 3d 1420 (6th

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

Cir. 1997); *Mitchell v. McNeil*, 487 F. 3d 374, 378 (6th Cir. 2007) (finding that "There is no statutory or common law right, much less a constitutional right, to an investigation.").

There is no interest of any Plaintiff, as far as any allegations are made, they being mere fact witnesses in the investigation that will be protected by any result of this case.

D. Lack of Jurisdiction

The Plaintiffs assert that the coroner's exercise of these statutory powers is or would be an "abuse of discretion," and therefore subject to being restrained by this court; or her findings be reversed, and on the suggestion that only because a determination on the required certification was stated, that is the one and only "inquest" allowed, with no authority cited that filling out the certification, on the limited information available at that time, is an "inquest" at all; much less that an inquest cannot be convened, or continued, before, during, or even after a certification is issued. An abuse of discretion is one which is arbitrary, unreasonable, or unconscionable - not merely an error of law or judgment, which is the worst Plaintiffs assert here. See *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 450 N.E.2d 1140 (1983).

But a coroner's decisions are not reviewed for "abuse of discretion." See *Taser Int'l, Inc. v. Chief Med. Exam'r*, 9th Dist. Summit No. 24233, 2009-Ohio-1519, ¶ 30. A party challenging a coroner's determination under R.C. 313.19 "[bears] the burden of establishing, by a preponderance of competent, credible evidence to the contrary, that the coroner's opinion was inaccurate." *Estate of Severt v. Wood*, 107 Ohio App.3d 123, 129, 667 N.E.2d 1250 (2d Dist. 1995). Further, the powers of injunction cannot be used to restrain the mere abuse of discretion, as "the discretion of a public official honestly and judiciously exercised will not be controlled by courts," but only restrained "in case of the

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

gross abuse of such discretion, when it appears that his discretion is being exercised arbitrarily, on grounds, or for reasons, clearly untenable, or to an extent clearly unreasonable." *State, ex rel. Harrison v. Perry*, 113 Ohio St. at 649.

For the Plaintiffs to prevail in this case the court would have to find that further investigation by the elected Coroner statutorily charged to do so, of a death while in the hands of the county law enforcement agency, should be precluded, either because of the mere issuance of the ministerial death certificate, or because another branch of the law enforcement apparatus has looked into it. But grounds exist to justify the exercise of that discretion, and that duty, particularly when the circumstances of the death have been publically called into question. "The general rule under the statutes is that it is the duty of the coroner to hold an inquest whenever there is reasonable ground to believe that a death was caused by violence or other unlawful means; and, of course, where he has abundant cause to believe that the death was so caused, his duty to act is clear." *State ex rel. Harrison,* 113 Ohio St. at 647.

The role of a duly elected official in investigating those circumstances should not be restrained based on a disagreement by those in another branch of government. The harm to be done by such a restraint, or allowing one branch to have exclusive control over a process to investigate those circumstances, cannot be overstated. The court would more likely than not refuse to even consider a complaint like this, or a TRO, against a grand jury hearing evidence, or the Sheriff reopening a cold case, whether it had done so once before or not. The coroner's statutory inquest authority is no different, and particularly no less important.

E. Splitting claims

THOMAS G. EAGLE
CO., L.P.A.
3386 N State Rt 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

Plaintiffs by their own admission filed a suit in Federal court on the same facts and circumstances, in part requesting the exact same relief. Compare, Federal Complaint (attached), par. 27-35, 37, 40-44, to this Complaint.[1] But a plaintiff is prohibited from filing multiple claims that arise from a single cause of action. *Rush v. City of Maple Heights*, 167 Ohio St. 221, 147 N.E.2d 599 (1958). Only one single cause of action arises as a result of the same wrongful act. *Prudential Property s. Kaiser Keystone Homes*, 5th Dist. Stark No. CA-5696, 1981 Ohio App. LEXIS 13193, 1981 WL 6599, at 5, citing *Rush v. Maple Heights*. The holder of that single cause of action therefore cannot split it so as to bring two actions out of the one cause of action. *Travelers Ins. Co. v. Lutz*, 3 Ohio Misc. 144, 210 N.E.2d 755 (M.C. 1964), citing *Rush*.

That is the exactly the course though these Plaintiffs have taken. Allowing such claim splitting will subject two courts to addressing the merits of the same claims, a defendant to defend the same case twice and in two forums, and allowing the risk of inconsistent determinations. Subject matter jurisdiction may be raised at any time, cannot be conferred by agreement, and cannot be waived. *State ex rel. Lawrence Development Co. v. Weir*, 11 Ohio App.3d 96, 463 N.E.2d 398 (10th Dist. 1983).

F. This court is without jurisdiction where another court has already assumed jurisdiction over the matter.

When jurisdiction of a court, and therefore the right of the plaintiff to proceed in court has attached, as these Plaintiffs have started in their own Federal case, that right cannot be arrested by another court – which is what this case is purporting to do:

> It is a fundamental rule that, as between courts of concurrent and co-extensive jurisdiction, the one whose power is first invoked by the institution of proper proceedings and the service of the required process acquires the right to

[1] A court may consider any and all pertinent materials when determining its own jurisdiction. *Nemazee v. Mt. Sinai Medical Center*, 56 Ohio St.3d 109, 564 N.E.2d 477 (1990).

THOMAS G. EAGLE CO., L.P.A.
3386 N. State Rt 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

adjudicate upon the whole issue and to settle the rights of the parties to the exclusion of all other tribunals.

State ex rel. Miller v. Common Pleas Court, 151 Ohio St. 397, 400-401, 86 N.E.2d 464; (1940); *Miller v. Court of Common Pleas*, 143 Ohio St. 68, 70, 54 N.E.2d 130 (1944).

It is not fair and not within the jurisdiction of this court to allow Plaintiffs to split their claims, whatever they are, and make it be defended, twice.

G. The Complaint does not allege acts that are outside the statutory authority of the Coroner.

Absolutely every act complained of in the Complaint (or its related Motions) is expressly authorized by the Ohio Revised Code. R.C. 313.05, .17 (the coroner may issue subpoenas and take testimony), 313.09 (the sheriff of the county in which the death occurred may be requested to furnish more information or make further investigation when requested by the coroner or his deputy); 313.08(I) (the evidence obtained may be submitted to BCII for further review and investigation). The role of the coroner in exercising these statutory rights, and duty, is broad. In *State ex rel. Blair v. Balraj*, 69 Ohio St. 3d 310, appellant's son died while in police custody. The coroner stated the cause of death as "cervical compression homicide during legal intervention." Appellant requested the coroner to remove the phrase "during legal intervention," arguing that the coroner has no authority to rule on legal responsibility for death, which is a legal judgment. When the coroner refused, appellant sought a writ.

The appeals court denied the writ and was affirmed by the Supreme Court, finding that the coroner's actions in making such a determination was entirely consistent with R.C. 313.12, 313.17, and 313.19. The court described the broad range of determinations the coroner is allowed to make, and rejected *State v. Cousin*, 5 Ohio App.3d 32, 449

THOMAS G. EAGLE CO., L.P.A.
3386 N State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

N.E.2d 32 (3d Dist. 1982), which tried to restrict a coroner's authority:

> Taken together, these three statutes facially contradict the *Cousin* court's assertion that the "manner and mode" language of R.C. 313.19 is limited to "physical and physiological mechanisms." To so state is to imply that R.C. 313.12's requirement to relate facts "concerning the time, place, manner, and circumstances of the death" is essentially meaningless, as is the coroner's inquiry pursuant to R.C. 313.17 as to who caused the death, together with all attendant circumstances.

State ex rel. Blair, 69 Ohio St.3d at 312. Everything that the Plaintiffs challenge here is within the authority, by statute and case law, of a county coroner. It is also within the coroner's *duty*, since it is not disputed that Goldson died by some means of "violence."

> The general rule under the statutes is that it is the duty of the coroner to hold an inquest whenever there is reasonable ground to believe that a death was caused by violence or other unlawful means; and, of course, where [she] has abundant cause to believe that the death was so caused, [her] duty to act is clear.

State ex rel. Harrison, 113 Ohio St. at 647-648 (citations omitted).

The "discretion of a public official honestly and judiciously exercised will not be controlled by courts," but only "in case of the gross abuse of such discretion, when it appears that his discretion is being exercised arbitrarily, on grounds, or for reasons, clearly untenable, or to an extent clearly unreasonable." *State, ex rel. Harrison v. Perry*, 113 Ohio St. at 649. Such grounds exist here to justify the exercise of that discretion, even under the allegations made by Plaintiffs, particularly when the circumstances of the death have been publicly called into question. The facts alleged do not support a finding sufficient to stop the coroner's exercise of her duty. How can this court find that the exercise of that duty, and strictly following only what is permitted by Statutes, as any other coroner could, can be a "gross" abuse of that discretion?

Plaintiffs have suggested that the mere certification is an "inquest," or that a certification bars more "inquest," another "inquest," or any "inquest." That is a

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

misconception that has no support. There can be no valid argument that just because a coroner complies with the statutory time limits to issue or supplement a death certificate, that if new information, or if delays by others with valid information drags out further investigation past those deadlines, one opposed to that investigation and seeking to obstruct it can declare victory and prohibit the further exercise by a coroner of their statutory and investigatory and inquest powers.

Plaintiffs seek to add time, scope, or finality terms to R.C. 313.17 that the General Assembly did not. If the Legislature meant to restrict a coroner's investigative powers only to prior to issuance of the time-limited Certification or report, or to only one attempt no matter what else is learned or happens thereafter, it could have said so. Not saying so is on purpose. *State ex rel. Butler Twp. Bd of Trs. v. Mont. Cty. Bd. of Comm'rs*, 124 Ohio St.3d 390, 394, 2009-Ohio-169, 922 N.E.2d 945, ¶ 21. An unambiguous statute must be applied consistent with the plain meaning of the statutory language, and a court cannot ignore or *add* words. *Portage Cty. Bd. of Commrs. v. City of Akron*, 109 Ohio St. 3d 106, 116, 2006-Ohio-954, 846 N.E.2d 478, ¶ 52.

Also, it is if nothing else implicit in the Statutes that a coroner's investigative powers are not limited only to the purpose of the Certification or Report, but continue:

> Therefore, the deputy coroner, *as allowed by R.C. 313.17*, permissibly investigated the circumstances surrounding Hassani's death in order to gain information *for her report and expert testimony*.

State v. Berry, 6th Dist. Lucas No. L-05-1048, 2007-Ohio-94, ¶ 32 (Emphasis added). A coroner's investigative powers are not limited to an inquest, or the certification of death. R.C. 313.17 "gives the coroner power to collect data pertaining to the cause of death *through means other than by formal inquest*." 1975 Op. Att'y Gen.

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

No. 75-011, 2-42 (emphasis added). The Statutes do not force a coroner to end their work after a death certificate.

Much has been made of an alleged "agenda." All the coroner has done since she has taken office is *defend* accusations. She has not sued anyone, charged anyone, or accused anyone. It is the Plaintiffs and others with the "agenda." If it were any other coroner, also thoroughly looking into a death in a county jail, it would be equally justified, but unimpeded. The court cannot consider strongly enough the implications of a death of a citizen while in the hands of police, and the only permitted full investigation being that of those same police, or the same branch of government; or using judicial process to essentially shield any outside investigation, much less one that will only make public the facts and circumstances that others maybe did not, and has no binding legal effect on anyone. And that in doing so, the coroner will only be doing exactly the same thing that Movants assert to do: "try" the determination of the cause of death.

Judicial intervention in the exercise of the Coroner's statutory powers over maybe the most sensitive but important event that can occur for law enforcement – death in the custody of law enforcement – serves no purpose related to determining the truth. If some other "concerned" person could use judicial process to stop a prosecutor, detective, grand jury, a reopening of a cold case, or any other coroner, from simply doing what the law says they can, and have a duty to do, there would be no justice. The license to do such harm by acts the Coroner is statutorily charged with investigating cannot be exaggerated.

H. Estoppel

Plaintiffs themselves have asked for, and received, the same material from the Sheriff's office that the Coroner has sought – and without opposition. See Subpoena, and

THOMAS G. EAGLE
CO., L.P.A.
3386 N State Rt 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

January 20, 2015, email from Plaintiffs' counsel (acknowledging production of the information). It is difficult to conceive how a party can claim to be entitled to stop an elected government official from conducting a statutorily authorized pubic inquiry, while asking for (and getting) the same (or substantially related) information themselves for their own inquiry. Generally a litigant is prohibited from taking actions that are inconsistent and contradictory to positions previously asserted:

> The general doctrine of estoppel is stated in varying forms. Blackstone says an estoppel arises "where a man hath done some act, or executed some deed, which estops or precludes him from averring anything to the contrary." Coke says it arises "where a man is concluded, by his own act or acceptance, to say the truth."

Ensel v. Levy, 46 Ohio St. 255, 259. 19 N.E. 597 (1889). In *Doe v. Archdiocese of Cincinnati*, 116 Ohio St. 3d. 538, 539, 2008-Ohio-67, 880 N.E.2d 892, the Ohio Supreme Court was addressing the claim of a statute of limitations bar as a result of conflicting conduct by an opposing party. The Supreme Court recited the traditional rule:

> We stated, "An estoppel arises when one is concerned in or does an act which in equity will preclude him from averring anything to the contrary, as where another has been innocently misled into some injurious change of position." . . . Implicit in each of these definitions is the principle that "[t]he purpose of equitable estoppel is to prevent actual or constructive fraud and to promote the ends of justice." [Citation omitted.].

Id. at 539-540, ¶7 (emphasis added).

In addition Plaintiffs are *judicially estopped* from claiming the information sought by the Coroner, or the production of it by the recipients of her subpoenas, or that the Coroner by performing her statutory duty, will do them harm or is unlawful, when making substantively the same demands themselves. Judicial estoppel provides that "a party cannot be permitted to occupy inconsistent positions or to take a position in regard to a matter which is directly contrary to or inconsistent with one previously assumed by

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

him." *Van Dyne v. Fidelity-Phenix Ins. Co.*, 17 Ohio App.2d 116, 127, 244 N.E.2d 752 (7th Dist. 1969), citing *Board of Commrs of Darke County v. Board of Comm'rs of Mercer County*, 93 Ohio St. 37, 40, 112 N.E. 147 (1915) ("The board of county commissioners of Darke county, having actively participated in securing the appointment of four freeholders to act as arbitrators in the manner and form as provided by the statute, is not now in position to challenge the constitutionality of the act under which it jointly, with the board of county commissioners of Mercer county, invoked the jurisdiction of that court."), and *Hoffman v. Fleming*, 66 Ohio St. 143, 158, 64 N.E. 63 (1902). See also, *Alternatives-Special, Inc. v. ODE*, 168 Ohio App.3d 592, 606, 2006-Ohio-4779, 861 N.E.2d 163 (10th Dist. 2006), ¶ 37; *Bruck Manufacturing Company v. Mason*, 84 Ohio App.3d 398, 400-401, 616 N.E.2d 1168 (8th Dist. 1992); *McGillvary v. City of Troy, Ohio*, U.S. 6th Cir. No. 93-3385, 1994 WL 409506, at *2. The Supreme Court for example determined that a party was estopped from asserting a right to a jury trial, by merely failing to object to the procedure used resolving the same issue that would normally be presented to a jury. *Digital Analog Design Corp. v. North Supply Co.*, 63 Ohio St.3d 657, 664, 590 N.E.2d 737 (1992).

The reasons for this rule are obvious: allowing a person under any circumstances to assert a right to take actions in one context to its benefit, and then turn around when it benefits it to do so to take a different position for someone else seeking to do the same thing (even if for different reasons), would amount to judicial enforcement and approval of gamesmanship, and is "utilized in order to preserve 'the integrity of the courts by preventing a party from abusing the judicial process through cynical gamesmanship.'" *Browning v. Levy*, 283 F.3d 761, 775 (6th Cir. 2002) (quotations omitted).

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

Estoppel applies to a position taken in the same or a prior case or "phase" of the proceedings. In *Black v. Gangale*, 8th Dist. Cuyahoga No. 66771, 1994 Ohio App LEXIS 66771, in a previous civil case between the same parties (another eviction case) a judgment was entered (based upon a stipulation) evicting the plaintiff from the property, i.e., that he was a "tenant" of the property and subject to a writ of restitution. In the subsequent action the tenant took, but was prevented from using, the opposite position, arguing that he was entitled to the property by virtue of being a buyer not a tenant. Id. at *2. In *Kimar v. Miller*, 5th Dist. Stark No. 1995CA00272, 1996 Ohio App LEXIS 1247, an injunction was sought to prevent building a home on a lot in a subdivision, allegedly in violation of certain deed restrictions. The defendant, the property owner, appealed the judgment granting the injunction, and was affirmed because the defendant (seeking to avoid the injunction to prevent her from violating the deed restrictions), although not even a party but in a previous case supported a different property owner obtaining an injunction on the exact same grounds: "[I]t is undisputed that [defendant] assumed a contradictory position she has taken in the instant action. Appellant is judicially estopped from taking such contradictory position in the instant action." Id.

In *Guidoumbouzianii v. Johnson*, 1st Dist. Hamilton No. C-960597, 1997 Ohio App LEXIS 1165, a plaintiff filed suit for fraud in a real estate sale. The plaintiff had previously filed bankruptcy and failed to list any ownership interest in the real estate, or a claim for fraud. The trial court in the later fraud case granted summary judgment against the plaintiff, because the plaintiff was "judicially estopped" from asserting the claim that he had previously failed to assert in the bankruptcy action. The court of appeals affirmed, applying the doctrine of judicial estoppel. Id., at *4, citing *Bruck*, supra.

THOMAS G. EAGLE
CO., L.P.A.
3386 N State Rt 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

And in *Yerow v. Yerow*, 1st Dist. Hamilton No. C-960159, 1997 Ohio App. LEXIS 1156, in a divorce action the plaintiff was found to have claimed, in a prior civil proceeding in Illinois, that he had no interest in a marital residence property. The divorce magistrate found that he was estopped from maintaining an inconsistent position with that which he had previously taken; that he has "no interest in the assets of the [subject property]." Id. In *Varner v. Eppley*, 125 Ohio St. 526, 529, 182 N.E. 496 (1932), the Supreme Court found that a party could not at one point request a jury instruction on an issue, and later claim that issue is not even in the case.

Likewise, Plaintiffs here should not be permitted in one case to use the subpoena power to compel production of investigation material in the Goldson death, or to prevent the Coroner from exercising her statutory authority and perform her duty, including an inquest, to use against the Coroner, and at the same time file another case in another court to prevent the Coroner from using the same power (and more) to do the same thing.

I. Grounds for a preliminary injunction cannot be met.

Plaintiffs also cannot meet the grounds for a preliminary injunction (to prevent the convening of an inquest), by clear and convincing evidence or otherwise. There is no likelihood of success on the merits of the Plaintiffs' claims to stop a statutory coroner's inquest, based on the legal arguments made herein entitling the Coroner to do so. There will not only be no irreparable, but there will be no injury to any Plaintiff if the inquest proceeds – which will only obtain evidence. An injunction of an inquest will harm third parties, and will not serve and will harm the public interest, particularly the next of kin of Zachary Goldson who have a right to the truth, and the Citizens of Brown County who have to know and have faith that a truth-finding exercise allowed by law will not be

THOMAS G. EAGLE
CO., L.P.A.
3386 N. State Rt. 123
Lebanon, Ohio 45036
Phone (937) 743-2545
Fax (937) 704-9826

stopped by politics, selfish or special interests, or fear of what might be learned; or that their one and only coroner would be prohibited from doing what the law would allow any other coroner to do. See *Union Twp. v. Union Twp. Professional Firefighters' Local 3412*, 12th Dist. Clermont No. CA99-08-082, 2000 Ohio App. LEXIS 475, *6.

The remedy is not available when an adequate remedy at law is – such as Plaintiffs' other lawsuit requesting essentially the same or similar relief. *Garono v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496 (1988).

Granting such a request harms the exercise of authority granted to county coroners just for cases just like this, where an independent eye is needed, and that eye and ear should not be stopped.

III. Conclusion

This case should be dismissed.

THOMAS G. EAGLE CO., L.P.A.

Thomas G. Eagle (0034492)
Attorney for Defendant
3386 N. St. Rt. 123
Lebanon, OH 45036
Phone: (937) 743-2545
Fax: (937) 704-9826
Email: eaglelawoffice@cs.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon the Attorney for Plaintiffs, Anthony B. Holman and John H. Phillips, 9521 Montgomery Road, Cincinnati, OH 45242, by ordinary U.S. Mail this 26th day of January, 2015.

Thomas G. Eagle (0034492)

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

GEORGE DUNNING, JASON HUFF, BRADLEY SCHADLE, JOHN SCHADLE, and RYAN WEDMORE c/o Phillips Law Firm, Inc. 9521 Montgomery Road Cincinnati, Ohio 45242 Plaintiffs, vs. JUDITH A. VARNAU, 7661 White Swan Road Georgetown, Ohio 45121-9670 Individually and in her official capacity as the Coroner of Brown County And DENNIS VARNAU 7661 White Swan Road Georgetown, Ohio 45121-9670 Individually as a joint participant with Defendant Dr. Judith Varnau and BROWN COUNTY, OHIO/BROWN COUNTY OHIO COMMISSIONERS Administration Building Suite 101 800 Mt. Orab Pike Georgetown, Ohio 45121 Defendants.	Case No. Judge 1:14CV932 J. BARRETT **COMPLAINT** **JURY DEMAND ENDORSED HEREON**

PRELIMINARY STATEMENT

1. This case embodies years of repeated and continuous lies and defamatory remarks lobbed by the Brown County Coroner's Office, specifically Judith and Dennis Varnau, against members of the Brown County Sheriff's Office. Defendants Varnau have taken extraordinary steps

to criminally investigate the death of Zachary Goldson, a former inmate who committed suicide while incarcerated in the Brown County Jail. Not only have Defendants Varnau grossly exceeded the scope of authority provided to coroners under the Revised Code, but they have publicly campaigned through the press to besmirch the names and reputations of every Sheriff's Office employee that oversaw Goldson's jailing on October 5, 2013. The Varnaus' defamatory remarks have not only ruined the good reputation Plaintiffs had previously earned, but have compromised the investigative efforts of the Ohio Bureau of Criminal Investigations (BCI) and the ongoing grand jury deliberations related thereto. This lawsuit seeks to amend the Coroner's findings to reflect the true cause and manner of death for Zachary Goldson, to rehabilitate the reputation of Plaintiffs, and to help ensure the Coroner's compliance with Ohio law to give deceased loved ones of Brown County residents the honest and dignified death investigations they deserve.

PARTIES

2. Plaintiffs George Dunning, Jason Huff, Bradley Schadle, John Schadle, and Ryan Wedmore are employed by the Brown County Sheriff's Office, and are residents of this judicial district.

3. Defendant Judith Varnau ("Dr. Varnau") was at all times relevant to this suit the Coroner of Brown County, Ohio. Dr. Varnau is a "person" under 42 U.S.C. § 1983 and at all times relevant to this suit acted under color of law. She is sued in both her individual and official capacities.

4. Defendant Dennis Varnau ("Mr. Varnau") was at all times relevant to this suit the husband of Dr. Varnau. He acted as a joint participant with her at death scenes and in communicating Coroner investigative findings to the press, including the events outlined herein. Mr. Varnau is a "person" under 42 U.S.C. § 1983 and at all times relevant to this suit acted under

color of law as a willful joint participant with Dr. Varnau, who authorized his actions and held him out as her official subordinate. He is sued in his individual and official capacities.

5. Defendant Brown County is a unit of local government organized under the laws of the State of Ohio. The County is sued through the Brown County Ohio Board of County Commissioners who are named only in their official capacities pursuant to R.C. § 305.12. Brown County is a "person" under 42 U.S.C. § 1983 and at all times relevant to this suit acted under color of law.

JURISDICTION & VENUE

6. Jurisdiction over the claim arising from Defendants' violation of the civil Rights Act is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343(3) and (4).

7. Jurisdiction over the state law claims are conferred by 28 U.S.C. § 1367.

8. Venue is proper because the events giving rise to Plaintiffs' claims occurred in and around Brown County, Ohio.

FACTUAL BACKGROUND

A. The long and litigious animus of the Varnaus towards the Brown County Sheriff's Office.

9. Dwayne Wenninger has been re-elected Brown County Sheriff three times since taking over the role in January 2001.

10. In 2008, Mr. Varnau, as an independent candidate for sheriff, filed a protest against Wenninger's candidacy based on certain requirements Wenninger allegedly failed to meet back when he first ran for office in 2000. When the board of elections denied his protest, Mr. Varnau sought a writ of mandamus to compel the board of elections to accept his protest. The Brown County Court of Common Pleas dismissed the mandamus action because there existed a legal remedy at law through a quo warranto action, and because Varnau's protest violated R.C. 3513.05. The Twelfth Appellate District affirmed the dismissal.

11. In February 2009, following another election victory by Wenninger, Mr. Varnau filed a complaint in the court of appeals for a writ of quo warranto to oust Wenninger from office and place himself as sheriff. Mr. Varnau claimed that because he was the only lawful sheriff's candidate in the November 2008 election, he was entitled to the office. Nevertheless, he lost on summary judgment grounds and was denied the writ. *State ex rel. Varnau v. Wenninger*, Brown App. No. CA2009–02–010, 2010-Ohio-3813. On appeal, a unanimous Ohio Supreme Court agreed with the Twelfth District that the quo warranto action was untimely.

12. Since losing his 4-year legal battle against Wenninger, Mr. Varnau has harbored and expressed intense disdain towards the Brown County Sheriff's Office and its employees. His feelings of ill-will are shared by Dr. Varnau.

13. Due to the malice the Varnaus have for the Brown County Sheriff's Office, they have sought fit to unlawfully expand the investigative role of the Coroner's Office to include naming publicly the person or persons responsible for causing another's death.

14. Law enforcement officials tasked with investigating homicides have communicated with Defendants asking them to refrain from releasing their investigative reports and information to the press. The Varnaus, however, remain committed to speaking publicly about investigatory matters that clearly exceed the scope of the Coroner's authority.

15. As Dr. Varnau testified at a recent civil trial to have her removed from the Coroner's Office, she has waited on prior occasions to issue the official cause of death of someone who died under suspicious circumstances when the Ohio Bureau of Criminal Investigation ("BCI") is involved and has yet to issue its report.

16. She further testified at the trial that "my duty is strictly to go ahead and determine the cause, manner and mode of death." But Defendants actively sought to do much more regarding the death of Zachary Goldson.

B. The arrest and detainment of Zachary Ryan Goldson.

17. Zachary Ryan Goldson was arrested on September 26, 2013, after being found in possession of a shortened .22 caliber firearm. He was charged with having a weapon under disability, possessing a dangerous ordinance, and for shooting across a roadway.

18. On October 4, 2013, Goldson was taken to Southwest Regional Medical Center after swallowing a pen. He returned back to the jail a short time later, but was again taken to the hospital after ingesting another pen, a toothbrush, and some staples. An endoscopy was scheduled to remove the objects.

19. Goldson was discharged to Brown County Deputy Travis Justice for transport. While leaving the hospital, Goldson attacked by stabbing Deputy Justice in his eye, and then attempted to steal his firearm.

20. Plaintiff Deputy Ryan Wedmore, Deputy Larry Meyer, and two Georgetown PD officers responded to Deputy Travis's distress call regarding the attack. They subdued Goldson, who apologized for causing the attack.

21. Goldson was thereafter transported back to the Brown County jail. Plaintiffs Bradley Schadle, Wedmore, Huff, and Dunning all assisted in placing Goldson back in his cell at approximately 2:40 a.m. on October 5, 2013.

22. Cameras attached to the jail's video surveillance system observed Goldson's movements about the common areas of the jail that night. No cameras are permitted to be aimed at the confines of any particular cell, but hallways and lobby areas are routinely monitored. All images captured therein are contemporaneously stored on hardware installed with the system. But to conserve county resources, the standard operating procedure is for the system to automatically tape over video footage that is more than 30 days old.

23. Goldson was not under suicide watch, meaning his cell would be checked once an hour as opposed to once every 10 minutes. His belongings and his blanket were removed, but not his bed sheet.

24. At approximately 2:55 a.m. on October 5, 2013, Plaintiff Bradley Schadle and Corrections Officer Sarah McKenzie found Goldson hanging from a bed sheet attached between the escutcheon surrounding the sprinkler head and the ceiling.

25. Upon finding Goldson hanging from the ceiling, he was promptly cut down. Goldson was then cuffed to guard against any outburst like his prior attack on Deputy Travis. No vital signs were detected, so Schadle immediately began performing CPR.

26. Per standard protocols, the Communications Center and the Ohio Bureau of Criminal Investigations (BCI) were soon apprised of this in-custody death. Dr. Varnau was also called to the scene. All relevant video evidence from the jail's surveillance system was preserved and presented to BCI for its investigation.

C. The Varnaus play detectives and conduct their own criminal investigation of Zachary Goldson's death.

27. Upon Dr. Varnau's arrival at the Brown County Jail, she inspected the cell in which Goldson's body lay. She then began recording her conversations with Plaintiffs and immediately questioning the factual accounts of the events that morning.

28. In reporting Goldson's death on October 6 to the Brown County Prosecutor, Jessica Little, Dr. Varnau volunteered that she learned from an anonymous source that a deputy stated there was going to be a block party for Goldson upon his return to the jail for having attacked Deputy Justice.

29. On November 27 (53 days after Goldson's death), Dr. Varnau requested a copy of the video surveillance footage that monitored the hallway adjacent to Goldson's cell. But per the automated controls built in to the video surveillance system, the footage requested had already been

taped over. Because BCI was the only agency in possession of the requested footage, Plaintiff John Schadle asked that Dr. Varnau direct her request to BCI.

30. On November 30, 2013, Dr. Varnau ruled Goldson's manner of death to be a homicide by strangulation, specifically with a hobble strap around his neck. The hobble strap to which Dr. Varnau refers is intended to describe a nylon leash issued to police to restrain arrestees or inmates. The time of death is noted to be 3:15.

31. In support of their conclusion that Plaintiffs killed Goldson, Defendant Varnau authored a Coroner's Report. In the report, the Varnaus grossly exaggerate the size and distance of every object in Goldson's cell, such as Goldson's toilet and bed being 12 feet from the center of his cell. The actual dimensions of his cell are much smaller.

32. The Report outlines a series of what it dubs "official story mismatches." It denies that Plaintiff Bradley Schadle could have cuffed Goldson while he lay on the ground, ignores people who were present to help cut Goldson down, and questions the lack of blood pooled in Goldson's feet and legs while neglecting the time during which Goldson laid on the floor.

33. The Report then seeks to remove the noose fashioned from the bed sheet found around Goldson's neck as the strangulation device. Instead, the Varnaus hypothesized that a Sheriff's Office hobble strap could have instead been used to strangle Goldson.

34. The Varnaus also fabricated hearing Plaintiffs say they found Goldson hanging from the sprinkler head. In fact, Goldson was found hanging from his bed sheet attached between the escutcheon and the ceiling on a pipe in the ceiling. This distinction is important because the actual object from which Goldson's noose hung could bear significantly more weight than the sprinkler head.

35. The Coroner's Report misleads the reader by including inaccurate information and excluding relevant details that pin responsibility directly on Plaintiffs.

36. Defendants then began leaking their investigative findings to multiple news outlets.

37. They published the full Coroner's Report on Goldson's death to these news agencies despite knowing of ongoing grand jury deliberations.

38. This report, along with Defendants' speculation as to what happened to Goldson, was presented as evidence to the grand jury and was supposed to be kept confidential until it rules on whether to indict any of the involved law enforcement officers.

39. At a minimum, Fox19 and 9 News have published the actual coroner's report and findings presented to the grand jury. As of the filing of this complaint, the grand jury has yet to decide whether to issue an indictment related to Goldson's death.

D. Malicious efforts made by Defendants to cast Zachary Goldson's death as a homicide.

40. The Varnaus contacted the press, including newspapers and television stations to criticize Plaintiffs and the Sheriff's Office over their handling of the video footage of the hallway outside of Goldson's cell during the early morning hours of October 5. Specifically, Dr. Varnau is quoted as saying, "[n]ormally in any potential homicide investigation video recorders would be immediately quarantined by law enforcement personnel, including the Sheriff's Office in this case, so that it could not be accessed in any way immediately upon discovery of a death in the jail."

41. Stated differently, Dr. Varnau lead the public to believe that Plaintiffs refrained from preserving the necessary video imaging because they knew the video system would eventually tape over footage of what occurred to Goldson. The Varnaus knew that the video imaging they requested was in the possession of BCI, and nevertheless chose to ignore this fact to bolster their fabricated argument for liability against Plaintiffs.

42. The Varnaus later sent the full coroner's report including surveillance video, phone calls, and autopsy and scene photos to newspapers and television stations.

43. On December 4, 2013, the Varnaus specifically named the Plaintiffs Bradley Schadle, George Dunning, Jason Huff, and Ryan Wedmore as the murderers of Zachary Goldson.

44. Later, the Varnaus also accused Plaintiff Chief Deputy John Schadle of tampering with evidence to cover for those who did cause Zachary Goldson's death.

45. Law enforcement officials tasked with investigating Goldson's death have communicated with Defendants asking them to refrain from releasing their investigative reports and information to the press. Despite these efforts, Defendants continue to knowingly and maliciously disseminate false circumstances surrounding Goldson's death in a conspiratorial attack to personally and professionally ruin Plaintiffs.

46. Upon information and belief, Montgomery County Coroner Kent E. Harshbarger, M.D., concluded that Zachary Goldson most likely committed suicide. However, Dr. Varnau pressured Dr. Harshbarger to remove any suicide reference from his final autopsy report. The report is devoid of any reference that Goldson's death was a homicide.

E. Culpable Conduct

47. Defendants have each acted negligently, knowingly, intentionally, recklessly, and with deliberate indifference to the rights of Plaintiffs.

48. Defendant Dr. Varnau as the Coroner of Brown County, Ohio is the policymaker for Brown County with respect to all actions related to this case.

49. At all times relevant to this case, Defendant Dr. Varnau has delegated to Defendant Dennis Varnau authority to take actions for the Coroner, including investigate death scenes, speak for the coroner to family members of the deceased and members of the press, and otherwise jointly participate in the actions taken under color of law by Defendant Dr. Varnau.

50. Defendants Judith and Dennis Varnau have abused the power of the Coroner's Office by naming all Plaintiffs but one personally responsible for Goldson's death, by falsifying

information for the explicit purpose of harming Plaintiffs personally and professionally in an effort to shame to Sheriff's Office as a whole. This abuse of power has been motivated by a long-running political feud the Varnaus have waged against the Brown County Sheriff.

51. Defendants' actions are outrageous. Defendants knew that disseminating false factual findings contained in the coroner's report to multiple media outlets would cast public doubt on the involvement of Plaintiffs in Goldson's death. Defendants did so maliciously to publicly embarrass and humiliate Plaintiffs and create public pressure on the grand jury to issue an indictment against Plaintiffs.

52. Since being elected Coroner with 176 write-in votes in 2012, Dr. Varnau has displayed a pattern of acting outrageously in ways that shock the conscience.

53. In 2014, more than 2,300 voters signed a petition to remove Dr. Varnau from office. A complaint was filed April 16, 2014, to remove her from office.

54. Then in July 2014, Defendants were sued by Donna Elfers and Angela Brown for damages arising from Defendants' failure to conduct any investigation whatsoever into the shooting death of Hanson Jones. The Varnaus also left parts of Jones' skull and the weapon that killed him in the home for Elfers and Brown to find.

55. The policies, practices, and customs of Defendant Brown County, which are set by Defendant Dr. Varnau as a policymaker for the county, were the moving force behind the Plaintiffs' injuries.

56. Due to Defendants' actions, Plaintiffs are now referred to in the community as "the Death Squad." Residents of Brown County and beyond have labeled Plaintiffs as murders, manipulative and corrupt. Children of Plaintiffs report being harassed at school by their peers and greatly upset over the false allegations of murder faced by their fathers.

57. Defendants have deliberately interfered with the BCI's investigation and the special prosecutor's presentation of the evidence to the grand jury in an attempt to make Plaintiffs appear increasingly responsible for Zachary Goldson's death.

FIRST COUNT
42 U.S.C. § 1983

58. The foregoing paragraphs are incorporated as if fully rewritten herein.

59. Defendants include a governmental entity and people acting under color of law for Brown County.

60. Defendants, by engaging in outrageous actions that shock the conscience, violated Plaintiffs' rights to life, liberty, and property under the law as secured by the Fourteeth Amendment to the United States Constitution.

61. Defendants' actions are the proximate cause of Plaintiffs' injuries.

SECOND COUNT
42 U.S.C. § 1985

62. The foregoing paragraphs are incorporated as if fully rewritten herein.

63. Defendants conspired to prevent Plaintiffs from performing their duties by making false accusations against them, specifically, causing Zachary Goldson's death, and tampering with evidence to cover for those who did cause Zachary Goldson's death.

THIRD COUNT
DEFAMATION

64. The foregoing paragraphs are incorporated as if fully rewritten herein.

65. Defendants authored the Coroner's Report and made other oral and written statements about the facts surrounding Goldson's death.

66. Defendants made these false statements with knowledge of their falsity or with reckless disregard of their falsity.

67. These false statements blatantly accuse Plaintiffs, both individually and collectively, of causing Goldson's death, and tampering with evidence to cover for those who did cause Zachary Goldson's death. False imputation of a crime constitutes defamation per se, and any imputation of a suspect related to a crime exceeds the scope and authority of the Coroner's duties by law under R.C. § 313.19, which limits the Coroner's authority to determining the manner, mode, and cause of death.

68. Defendants deliberately circulated these false statements to print and television news agencies throughout Southern Ohio. These same news agencies published Defendants' false statements.

69. Defendants acted with actual malice in making the above statements.

70. Defendants' statements caused harm to Plaintiffs' reputation, exposed them to public contempt, ridicule, and shame, and injured Plaintiffs in their trade, business, or profession.

FOURTH COUNT
CIVIL CONSPIRACY

71. The foregoing paragraphs are incorporated as if fully rewritten herein.

72. Defendants participated in a malicious combination involving two or more persons, resulting in the unlawful act of attributing Plaintiffs responsible for Goldson's death, and tampering with evidence to cover for those who did cause Zachary Goldson's death.

73. Defendants conspiracy caused damages to Plaintiffs.

FIFTH COUNT
AMENDMENT OF CORONER'S VERDICT

74. The foregoing paragraphs are incorporated as if fully rewritten herein.

75. As Brown County Coroner, Dr. Varnau is tasked with determining the cause of death, and the manner and mode in which the death occurred, for every person who dies within the territorial jurisdiction of Brown County.

76. R.C. 313.19 authorizes this Court to order Dr. Varnau to change her decision where the findings of her decision are proven to be wrong.

77. Dr. Varnau should be ordered to change her decision as to the cause, manner, and mode of Goldson's death to exonerate Plaintiffs of any wrongdoing.

SIXTH COUNT
PUNITIVE DAMAGES

78. The foregoing paragraphs are incorporated as if fully rewritten herein.

79. The conduct of Defendants in widely broadcasting to multiple news agencies their false and defamatory statements about Plaintiffs constitutes a conscious disregard of Plaintiffs' safety and wellbeing. This created a great probability of causing substantial harm to Plaintiffs.

80. Plaintiffs are entitled to an award of punitive damages and reasonable attorney fees.

WHEREFORE, Plaintiffs request that this Court award them:

A. Compensatory damages in an amount to be shown at trial;

B. Punitive damages against Defendants Judith and Dennis Varnau only in an amount to be shown at trial;

C. Costs incurred in this action and reasonable attorney's fees; and

D. Such additional relief as the Court deems just and proper.

Respectfully submitted,

John H. Phillips (0043934)
Anthony B. Holman (0084130)
PHILLIPS LAW FIRM, INC.
9521 Montgomery Road
Cincinnati, OH 45242
T: (513) 985-2500
F: (513) 985-2503
Email: jhp@phillipslawfirm.com
Attorneys for Plaintiffs

Of Counsel:

PHILLIPS LAW FIRM, INC.
9521 Montgomery Road
Cincinnati, OH 45242
T: (513) 985-2500
F: (513) 985-2503

Jury Demand

Plaintiffs hereby demands a trial by jury of the maximum number in this action.

John H. Phillips (0043934)

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

George Dunning, *et al.*,

Plaintiffs,

vs.

Judith A. Varnau, *et al.*,

Defendants.

: Case No.: 1:14CV932
:
: Judge Michael R. Barrett
:
: **NOTICE OF SERVICE OF SUBPOENA**
:

Plaintiffs hereby give notice that a subpoena *duces tecum* will be served on Sheriff Dwayne Wenninger of the Brown County Sheriff's Office. A copy of said subpoena is attached hereto.

Respectfully submitted,

/s/ Anthony B. Holman
John H. Phillips (0043934)
Anthony B. Holman (0084130)
PHILLIPS LAW FIRM, INC.
9521 Montgomery Road
Cincinnati, Ohio 45242
(513) 985-2500 | (513) 985-2503
jhp@phillipslawfirm.com
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via U.S. Mail this 30th day of December, 2014, on the following:

Kimberly Vanover Riley, Esq.
Linda L. Woeber, Esq.
Lisa Marie Zaring, Esq.
MONTGOMERY, RENNIE & JOHNSON
36 East Seventh Street, Ste. 2100
Cincinnati, Ohio 45202
Attorneys for Defendants Varnau

Thomas G. Eagle, Esq.
THOMAS G. EAGLE CO., LPA
3386 North State Rt. 123
Lebanon, Ohio 45036
Attorney for Defendants Varnau

Brown County Ohio Commissioners
Administration Building, Ste. 101
800 Mt. Orab Pike
Georgetown, Ohio 45121

/s/ Anthony B. Holman
Anthony B. Holman (0084130)

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

George Dunning, et al.,
Plaintiff
v.
Judith A. Varnau, et al.,
Defendant

Civil Action No. 1:14CV932

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Sheriff Dwayne Wenninger, Brown County Sheriff's Office

(Name of person to whom this subpoena is directed)

☐ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Phillips Law Firm, Inc. 9521 Montgomery Road Cincinnati, Ohio 45242	01/16/2014 10:00 am

The deposition will be recorded by this method: _____

☑ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: all documents and tangible things that relate in any manner to the investigation of the death of inmate Zachary Goldson by the Ohio Bureau of Criminal Investigation, as well as any documents or objects obtained by the Special Prosecutors Section, that are in your possession, custody, or control.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/30/2014

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Anthony B. Holman

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiffs, who issues or requests this subpoena, are:

Anthony Holman, 9521 Montgomery Road, Cincinnati, OH 45242, abh@phillipslawfirm.com, 513-985-2500

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Dunning v. Varnau - Sheriff's response to subpoena

From: Anthony B. Holman <abh@phillipslawfirm.com>
To: kriley <kriley@mrjlaw.com>; lwoeber <lwoeber@mrjlaw.com>; Lisa Zaring <LZaring@mrjlaw.com>; eaglelawoffice <eaglelawoffice@cs.com>; traskin <traskin@mrrklaw.com>; cwright <cwright@mrrklaw.com>
Cc: John H. Phillips <jhp@phillipslawfirm.com>
Subject: Dunning v. Varnau - Sheriff's response to subpoena
Date: Tue, Jan 20, 2015 12:16 pm

Counsel:

We received from the Brown County Sheriff's Office today a box containing about 1,500 pages, along with CDs and thumbdrives, in response to our subpoena for the BCI file. We received one request already from MRJ for a copy, but we wanted to offer a copy to anyone else who would like one. Our plan is to front the cost for copying, packing, and shipping, and send an itemized statement for the cost. I just need a count to figure out how many copies to prepare. Please let me know if you'd like a copy.

Best Regards,

Anthony B. Holman

Phillips Law Firm, Inc. | 9521 Montgomery Road, Cincinnati, OH 45242 | (513) 985-2500 | (513) 985-2503 – Fax

From: Anthony B. Holman <abh@phillipslawfirm.com>
To: kriley <kriley@mrjlaw.com>; lwoeber <lwoeber@mrjlaw.com>; Lisa Zaring <LZaring@mrjlaw.com>; eaglelawoffice <eaglelawoffice@cs.com>; traskin <traskin@mrrklaw.com>; cwright <cwright@mrrklaw.com>
Cc: John H. Phillips <jhp@phillipslawfirm.com>
Subject: Dunning v. Varnau - Sheriff's response to subpoena
Date: Tue, Jan 20, 2015 12:16 pm

Counsel:

We received from the Brown County Sheriff's Office today a box containing about 1,500 pages, along with CDs and thumbdrives, in response to our subpoena for the BCI file. We received one request already from MRJ for a copy, but we wanted to offer a copy to anyone else who would like one. Our plan is to front the cost for copying, packing, *and* shipping, and send an itemized statement for the cost. I just need a count to figure out how many copies to prepare. Please let me know if you'd like a copy.

Best Regards,

Anthony B. Holman

Phillips Law Firm, Inc. | 9521 Montgomery Road, Cincinnati, OH 45242 | (513) 985-2500 | (513) 985-2503 – Fax