IN THE MUNICIPAL COURT OF CLARK COUNTY OHIO

IN THE MATTER OF:

AFFIDAVIT OF GUERLINE JOZEF CHARGING DONALD J. TRUMP AND JD VANCE WITH CRIMINAL ACTS

CASE NO: 24SPM100

DECISION AND ORDER

WILT, V.

This matter is before the Court on an Affidavit of Guerline Jozef charging Donald J. Trump and JD Vance with criminal acts pursuant to Revised Code §2935.09(D), filed September 24, 2024 and Amended Affidavit filed September 30, 2024. The purpose stated therein for the Affidavit was to criminally charge Donald J. Trump and James David Vance, to seek their prosecution, and ask that a judge "review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court." Notably, the Affidavit in "PURPOSE OF THIS AFFIDAVIT" paragraph 5, did not request that the Court issue a warrant or summons to the accused persons. Because this is a serious matter of significant public interest, the Court has reviewed this case en banc, and has issued this Decision and Order on the issues posed.

The Amended Affidavit includes 30 pages of factual statements alleging criminal behavior on the part of the accused persons, Donald J. Trump and JD Vance. The crimes alleged are as follows:

- Disrupting Public Services under R.C. §2909.04(A) and (B), a 4th degree felony.
- Making False Alarms under R.C. §2917.32(A), a 1st degree misdemeanor.

- Inducing Panic under R.C. §2917.32(A), a 2nd, 3rd, 4th or 5th degree felony or 1st degree misdemeanor.
- Complicity under R.C. §2923.03(A), a 4th degree felony and a 1st degree misdemeanor.
- Telecommunication Harassment under R.C. §2917.21(A), a 1st degree misdemeanor.
- Aggravated Menacing under R.C. §2903.21(A), a 1st degree misdemeanor.
- Inducing Panic under Springfield City Ordinance 509.06, a 1st degree misdemeanor.
- Telecommunication Harassment under Springfield City Ordinance 537.08, a 1st degree misdemeanor.
- Complicity under Springfield City Ordinance 501.10, a 1st degree misdemeanor.

The Court has fully reviewed the Affidavit, Amended Affidavit, Bench Memorandum, Amended Bench Memorandum, flash drive of video clips referenced in the Affidavits, Supplemental Affidavit, relevant statutory and case law, including the decision from Cleveland Municipal Court *In Re: Affidavits relating to Timothy Loehmann, and Frank Garmback*, which was attached to the Bench Memorandum filed by counsel for the Affiant. The statute which empowers the Affiant to seek the requested relief states in pertinent part:

> A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. A private citizen may file an affidavit charging the offense committed with the clerk of a court of record before or after the normal business hours of the reviewing officials if the clerk's office is open at those times. A clerk who receives an affidavit before or after the normal business hours of the reviewing officials shall forward it to a reviewing official when the reviewing official's normal business hours resume.

R.C. §2923.09(D).

The procedure for the Court to follow once such an Affidavit has been filed with the Court, requesting that a judge review the allegations, states:

> **(A)** Upon the filing of an affidavit or complaint as provided by section 2935.09 of the Revised Code, if it charges the commission of a felony, such judge, clerk, or magistrate, unless the judge, clerk, or magistrate has reason to believe that it was not filed in good faith, or the claim is not meritorious, **shall** forthwith issue a warrant for the arrest of the person charged in the affidavit, and directed to a peace officer; otherwise the judge, clerk, or magistrate **shall** forthwith refer the matter to the prosecuting attorney or other attorney charged by law with prosecution for investigation prior to the issuance of warrant.
>
> **(B)** If the offense charged is a misdemeanor or violation of a municipal ordinance, such judge, clerk, or magistrate **may**:
>
> > **(1)** Issue a warrant for the arrest of such person, directed to any officer named in section 2935.03 of the Revised Code but in cases of ordinance violation only to a police officer or marshal or deputy marshal of the municipal corporation;
> >
> > **(2)** Issue summons, to be served by a peace officer, bailiff, or court constable, commanding the person against whom the affidavit or complaint was filed to appear forthwith, or at a fixed time in the future, before such court or magistrate. Such summons shall be served in the same manner as in civil cases.

R.C. §2935.10(A)(B) (emphasis added).

Since the Affiant is empowered to request the Court review the matter, what the Court is to do upon its filing is the first step in the analysis. For allegations of felony behavior, the Court is to issue a warrant for the arrest of the accused person, unless the Court questions whether the Affidavit was filed in good faith or questions whether probable cause exists to support the charge. In the event the Court questions either good faith or probable cause, then the court **shall** refer the matter to the prosecutor for further investigation. R.C. §2935.10(A). As such, unless the Court issues a warrant for the accused's arrest, the Court **must** refer the matter to the prosecutor for investigation.

Where the offense is a misdemeanor, the Court **may** issue a warrant for the person's arrest or issue a summons commanding the person to appear before the Court. R.C. §2935.10(B)(1) and (2). At first blush, it would seem that the paragraph concerning misdemeanor charges leaves no room for the Court to even exercise its independent judgment concerning whether the allegations in the Affidavit state probable cause to find a criminal

offense has occurred. Such an interpretation would be misplaced for two reasons. First, the paragraph concerning charges of a felony has the mandatory language of "shall". Thus, the Court is required to either issue a warrant or refer the matter to the prosecuting attorney. In the event of a misdemeanor, the language is permissive using the word "may". Thus the Court has discretion to determine whether a warrant or summons is appropriate. Second, it is a fundamental tenant of constitutional law that no warrant can be issued without probable cause. Thus, at a bare minimum, probable cause must exist in order for a Court to issue a warrant or summons on a criminal charge. Even with a finding of probable cause, the permissive language of the statute permits the Court to decline to issue either a warrant or a summons on a misdemeanor charge.

Where a misdemeanor arises from the same conduct as alleged involving a felony the misdemeanor shall be prosecuted in conjunction with the felony in the Court of Common Pleas. Crim. R. 5(B)(1) and Crim R. 7(A).

The Court turns next to the question of whether the claim is meritorious. Stated another way, whether there is probable cause to support the allegations that a crime or crimes have occurred. Probable cause exists where the facts and circumstances are sufficient to warrant a prudent person to believe that the suspect has committed a criminal offense. *Beck v. Ohio*, 379 U.S. 89, 91 (1964). All of the conduct alleged in the Affidavit centers around the statements made by either Donald Trump or JD Vance. Freedom of speech is among our most precious and protected constitutional rights. It is enshrined in the 1st Amendment of the United States Constitution. Indeed, the United States and Ohio Supreme Courts have recognized the importance of speech, even when it stirs people to anger.

> [A] principal 'function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates

dissatisfaction with conditions as they are, or even stirs people to anger.' [Citations omitted.] It would be odd indeed to conclude *both* that 'if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection,' [citation omitted] *and* that the Government may ban the expression of certain disagreeable ideas on the unsupported presumption that their very disagreeableness will provoke violence.

"Thus, we have not permitted the government to assume that every expression of a provocative idea will incite a riot, but have instead required careful consideration of the actual circumstances surrounding such expression, asking whether the expression 'is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.' *Brandenburg v. Ohio*, 395 U.S. 444, 447 [89 S.Ct. 1827, 1829, 23 L.Ed.2d 430, 434, 48 O.O.2d 320, 322] (1969) (reviewing circumstances surrounding rally and speeches by Ku Klux Klan)." *Johnson*, 491 U.S. at 408-409, 109 S.Ct. at 2542, 105 L.Ed.2d at 356-357.

State v. Lessin, 67 Ohio St. 3d 487, 492 (1993).

In this case, not only do the allegations raise the issue of speech, but complain of political speech. "Political speech is at the core of what the 1st Amendment is design to protect." *Morse v. Frederick*, 551 U.S. 393, 403 (2007), quoting *Virginia V. Black*, 538 U.S. 343, 365 (2003). In the widely cited case of *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the United States Supreme Court reinforced the vital interest in our democracy protecting speech critical of government and protecting political speech, in the following:

> There is no question that speech critical of the exercise of the State's power lies at the very center of the First Amendment. Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people.
>
> [Therefore], political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'
>
> *Id.* at 339-340, quoting *F.E.C. v. WIS. Right To Life, Inc.*, 551 U.S. 449, 464 (2007).

Suffering and "enduring" speech that one does not like is part of the price of freedom. *Sorrell v. IMF Health Inc.*, 564 U.S. 552, 575 (2011). "Speech remains protected even when it may stir

people to action, move them to tears, or inflict great pain." *Sorrell,* at 576. "[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). [T]he mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action." *Brandenburg,* at 448. There is a significant "distinction between the statement of an idea which may prompt its hearers to take unlawful action and the advocacy where such action be taken". *Yates v. United States,* 354 US 316, 321-322 (1961).

Although all speech does not have absolute constitutional protection, the strict scrutiny analysis of any criminalization of speech, requires thorough and extensive investigation before any charges would be pursued. Here, the 1st Amendment protection of the speech, and political nature of the speech the Affiant claims to constitute criminal behavior, factor into the Court's analysis of the good faith nature of the allegations. The presidential election is less than 35 days away. The issue of immigration is contentious. Due to the proximity of the election, and the contentiousness concerning the immigration policies of both candidates, the Court cannot automatically presume the good faith nature of the Affidavits. That is not to say that the Affiant does not believe what she is alleging is true, but rather, whether the conclusions the Affiant reaches – that being that Donald Trump and JD Vance's political speech constitute the alleged crimes - could be influenced by her personal experiences, as opposed to an objective analysis of the alleged speech, the constitutional protections afforded to that speech, the alleged conduct occurring within the community, and a claimed nexus between the speech and that conduct.

A nexus or causation between the accused persons' speech and the acts committed by other people, as alleged in the Affidavits, cannot be presumed.

> "It is the very essence of our deep-rooted notions of criminal liability that guilt be personal and individual." Sayre, Criminal Responsibility for the Acts of Another (1930), 43 Harv.L.Rev. 689, 716. Generally, for a criminal defendant's conduct to be the proximate cause of a certain result, it must first be determined that the conduct was the cause in fact of the result, meaning that the result would not have occurred "but for" the conduct. Second, when the result varied from the harmed intended or hazarded, it must be determined that the result achieved was not so extraordinary or surprising that it would be simply unfair to hold the defendant criminally responsible for something so unforeseeable. LaFave & Scott, Criminal Law (1972), Section 35, 246.

State v. Lovelace, 137 Ohio App. 3d 206, 216 (1999).

In this case the "conduct" referred to is speech. For probable cause to exist, it is not sufficient that Trump or Vance might have foreseen the acts by others that are alleged in the Affidavits. *Wagner v. Ohio State Univ. Med. Ctr.,* 188 Ohio App. 3d 65 ¶25 (2010), citing Prosser & Keeton Law of Torts (5 Ed. 1984). For probable cause to support prosecution, the totality of the circumstances must prove that the statements by Trump and Vance are not entitled to 1st Amendment protection, the statements are completely false, the statements are the direct and proximate cause of the alleged behavior of others, the alleged behavior of others was criminal, and that the criminal behavior should have been reasonably anticipated by Trump and Vance as imminent resulting from their speech. *Id.*; *Lindsay P. v. Towne Props. Asset Mgmt. Co.,* 2013-Ohio-4121, ¶21 (12th Dist. App.) The concurring opinion further elucidates the factual considerations in the Affidavit and materials submitted, which may bear on probable cause and good faith in this case. However, in writing this Decision, the majority of the panel did not believe it was the Court's place to further address probable cause or good faith, based on the Court's disposition of the case.

The judiciary and the prosecution have separate functions. Courts are not investigative bodies. It is appropriate for the Court to act in reliance on the prosecutor's investigations. *Nikooyi vs Affidavit of Crim. Complaint*, 2020-Ohio-192, ¶16 (11th Dist. App.). This is particularly true where the allegations are of a serious nature. *Id.* For the reasons set forth in the concurring opinion, with which the full panel agrees, the conclusion of whether the evidence and causation necessary for probable cause exists to commence a prosecution of the alleged offenses is best left in the investigatory hands of the prosecution. The prosecutor's determination on probable cause will render the good faith basis for the Affidavits moot.

The statutory scheme under which the Affidavit and Amended Affidavit are filed does not permit this Court to simply deny the request and dismiss the allegations as it relates to the felony charges. *State ex. Rel. Brown v. Jeffries*, 2012-Ohio-522 ¶10. (4th Dist. App.). Rather, because the Court questions the existence of probable cause and the good faith nature of the Affidavits, the Court is required to refer the felony charges to the appropriate prosecuting authority for further investigation. R.C. §2935.10(A). Therefore, this Court cannot dismiss the Affidavits and its requests in their entirety.

It is the opinion of this panel that the discretion afforded concerning the misdemeanor charges would permit the Court to dismiss the request on those misdemeanors. However, since misdemeanor charges may be filed in conjunction with felony charges arising out of the same facts or circumstances, it is appropriate to refer all alleged charges to the felony prosecutor for Clark County, Ohio, for further investigation and determination as to whether probable cause exists to file criminal charges as alleged against Donald J. Trump and JD Vance, with particular consideration to be given to the strong constitutional protections afforded to speech and political speech in particular.

IT IS THEREFORE ORDERED that all matters set forth in the Affidavit filed September 24, 2024, are hereby referred to the Clark County Prosecuting Attorney for further investigation and determination whether any prosecution is warranted.

Valerie J. Wilt, Presiding/Administrating Judge

Stephen Schumaker, Judge

Daniel D. Carey, Judge

CONCURRING OPINION

SCHUMAKER, S.

The Court has reviewed all documents and items filed by the Attorneys for Guerline Jozef and the Haitian Bridge Alliance. I concur in full with the finding and Opinion of the Court of which I am a signatory. This opinion is to document further reasoning as to the decision of this Judge.

The Court concludes there is no necessity for a hearing in this matter. Counsel for the Affiant states in the Bench Memorandum that "Investigation is neither needed nor requested." The Affiant has submitted extensive materials, a Bench Memorandum, an Amended Bench Memorandum and a Supplemental Bench Memorandum. The statute does not require a hearing and the Court has no obligation to set the case for hearing. *In Re Slayman*, Court of Appeals, Fifth Appellate District, Licking County, December 18, 2008, Case No. 08 CA 70; *State ex rel Brown v. Nusbaum*, 152 Ohio State 3d 284.

Ohio Revised Code §2935.10 and case law requires the Court to make two inquiries. The first is whether probable cause exists as to all elements of the alleged crimes and/or the claim is not meritorious. The second condition is "unless the Judge, clerk or magistrate has reason to believe that it was not filed in good faith."

The Court notes that the Affidavit and request in this case is not filed by a lay person but by counsel. The filing is signed by one attorney but lists four different attorneys as representing the Parties requesting action by the Court. The first issue that will be addressed is the issue of probable cause.

The materials submitted make no specific allegation of venue in Clark County, Ohio. "While venue is not a material element of the offense charged, it is a fact that the state must prove beyond a reasonable doubt unless waived by a criminal defendant. *State v. Hampton*, 134 Ohio St.3d 447, 2012 – Ohio – 5688, 983 N.E.2d 324,; *State v. Birt*, 12th Dist. Butler No. CA2012 -02-031, 2013 – Ohio – 1379 as cited in *State v. Pearce*, Court of Appeals of Ohio, fifth Appellate District, Ashland County, October 30 2017, Date of Judgment Entry. Case No. 17-COA -013. While Affiant's filing is not a criminal complaint it requests a complaint be filed on the basis of the allegations. Ohio Criminal Rule 3 requires a

complaint to include a "written statement of the essential facts." The Affidavit of Ms. Jozef indicates "we have spoken" to immigrants in Springfield, Ohio. Paragraphs 9 through 13 allege different incidents and/or fears of Haitian individuals in Springfield. While the Court should not have to guess at the specific allegations of venue these averments could establish venue in Clark County, Ohio under some provisions of Ohio Revised Code §2901.12. These averments are hearsay. Ohio Criminal Rule 4 (A) (1) provides "The finding of probable cause may be based upon hearsay in whole or part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing there is a factual basis for the information furnished."

The averments in paragraphs 9 through 13 allegedly were made to unnamed individuals working with the Haitian Bridge Alliance. The individuals who allegedly made the statements to the unnamed individuals from the Haitian Alliance are also not identified. The Court is asked to find that two layers of hearsay submitted by unnamed individuals have "a substantial basis for believing the source of the hearsay to be credible and for believing there is a factual basis for the information furnished." This hearsay not only goes to the establishment of venue but also to elements of some or all of the crimes that the Affiant wishes the Court to "make independent findings of probable cause based on the facts presented – and issue warrants for Trump's and Vance's arrests." (page 1 of Affiant's Bench Memorandum). There is no information submitted to the Court that can be examined for the Court to find that the unnamed sources of these averments are "credible and for believing there is a factual basis for the information furnished." Without such basis provided the Court cannot make the requisite findings required for the Court to consider the averments for the truth if the matter asserted in paragraphs 9 through 13.

Paragraphs 7, 8, 16, 17, 18, 50, 51, 57, 61, 69, 76, 79, 96, 97, 98, 100, 101, 107, 110, 111, 112, 116, 117, 119, 120, 122, and 133 allege that former President Trump and Senator Vance knowingly made false statements – primarily concerning dogs, cats and geese. The Affiant's materials rely heavily on statements by Governor DeWine and local officials to attempt to establish probable cause of the false nature of the statements. The statements from the officials repeatedly indicate the following very similar

statements – "We wish to clarify that we have not been able to verify any credible reports" – "they've found no credible evidence" – "they have no evidence of that at all" – "no verifiable evidence or reports to show this was true" – "we just have no verifiable claim that this actually happened" and many similar statements. The Court acknowledges the difficulties of proving a negative. There is significant difference however, between stating that there are no verifiable reports that a statement is true and proof and/or probable cause that a statement is false. This Judge has tremendous respect for the officials making the above and similar statements but if any of the officials voiced the opinion that the statements at issue were false those statements are in the form of opinion. Ohio Evidence Rule 701 states:

> "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of the witness' testimony or the determination of a fact in issue."

There is nothing in the reported statements by the officials that, on the basis of the record before the court, would justify any opinion that the statements at issue are false – just that they cannot be verified as true.

The Affiant's materials implicitly acknowledge that there were reports that led to the statements in issue. The Court is left to speculate from most of the Affiant's materials as to why the reports were not verifiable and/or credible. Did police respond to the reports? If there was a response what was the elapsed time between the report and the arrival of officers to investigate the report? What are the articulable facts that would justify the opinion that the reports are false? The statements may be false. There appears to be no evidence outside of the acknowledged reports that the statements are true. The statements may be true but there is no factual basis for the Court to find that the statements are true or false based on the statements of the listed officials. Once again the Court should not be left to speculate. Probable cause is based on articulable facts – not speculation.

In addition to citing the statements by local officials, the Affiant relies heavily on an interview conducted on CNN with Senator Vance as evidence that Former President Trump and Senator Vance were purposely making false statements to the public. The following is paragraph 52 of the Affidavit.

> "In the same interview, Vance admitted that he was just making harmful statements up: "If I have to create stories so that the American media actually pays attention to the suffering of the American people then that's what I'm going to do, Dana.""

The Affiant makes the same allegation in paragraph 7 (in bold black type) of her Affidavit.

The referred to interview is contained in what is labeled paragraph 49 on the flash drive submitted to the Court as an exhibit to the Affidavit. The interviewer also labels the statements as false. The Court has reviewed that recording numerous times. The Court sees nothing in the interview that is an admission by Senator Vance that he was "just making harmful statements up." When asked about the evidence as to the statements Senator Vance replied "The evidence is the first hand accounts of my constituents who are telling me this happened." When the interviewer questioned him about "creating stories" after the quote listed in paragraph 52 the Senator immediately replied: "Dana, it comes from first-hand accounts of my constituents. I say we are creating a story meaning we are creating the American media's focus on it." The interviewer later says "I have not accused you of anything."

The Affiant's averment in paragraph 52 is further shown to be inaccurate in Exhibit 58 which contains an interview of Senator Vance on the Face The Nation show. When the interviewer referred to these "false claims" the Senator responded as follows:

> "I've heard about a dozen things from my constituents in Springfield, Ohio – ten of them are verifiable and confirmable – a couple of them we have direct first hand accounts – for example of migrants abducting geese at the local park and slaughtering them and eating them – Maybe all these constituents are lying to me – I would appreciate it if the American media would show up and did some real investigation rather than amplify the worst people in the world. Why is someone calling in a bomb threat?"

The Affiant also submitted paragraph/exhibit 61 on the flash drive. In response to a PBS show a member of the media asked a similar question. Senator Vance responded as follows:

"I've got residents of Springfield, Ohio who are coming to me with a dozen different problems – they have been talking about it for months and some years – the American media totally ignored them until they showed up to fact check what people were saying about pets. Why weren't you in Springfield, Ohio 6 months ago talking about the housing crisis? Why weren't the American media six months ago talking about skyrocketing rates of accidents – of car insurance. Why aren't they talking about the rural healthcare problems because the hospitals have been over whelmed. Why aren't they talking about the school system in a small town that now has 1,000 children who don't even speak English. How are the American children going to get a good education when everyone is concentrating on the other kids – they are innocent children but that doesn't mean there should be a thousand of them in every school. One story out there from multiple people – multiple, multiple people have come to my office – have said on video – they talk about the pet story and that's all the American media wants to talk about and of course the American media goes into Springfield, Ohio – dives in harasses everybody who dares complain about the conditions in town – that's not journalism – that's not seeking the truth – that is bullying on an industrial scale.

> .....Yesterday we got a call from a constituent in my office from a person very worried about a lot of the problems in Springfield and has direct eyewitness evidence bearing on a lot of them. The person said please do not share my name with anybody because the minute anyone in Springfield speaks out a dozen cameras show up at their front door and tries to destroy their lives."

The above accounts and quotes were submitted by the Affiant in support of her claims that the statements in issue were false. Like the earlier averments discussed in [paragraphs 9 through 13] the above quotes are hearsay from unidentified individuals. They also cannot be considered for the truth of the matter asserted. They could however, be admitted as to the state of Senator Vance's state of mind (*mens rea*) and depending on unknown circumstances perhaps for the same purpose as to the state of mind of former President Trump when the statements at issue were made. See *In re C.C.*, Court of Appeals of Ohio, Second Appellate District, Montgomery County, April 1, 2016 rendered C.A. Case No. 26864; See also *State v. Apanovitch*, Supreme Court of Ohio, October 7 1987, Decided No. 86-1746.

There is nothing in the submitted materials indicating officials, the media and/or Counsel for the Affiant are making any efforts to investigate the reports from the Senator's constituents. Counsel actually states "Investigation is neither needed nor requested" (see page 3 of the Bench Memorandum). Those reports may be false – they may be credible and true. Senator Vance seems to believe the accounts are true from the submitted materials. The above materials, submitted by the Affiant negates probable cause as to the required *mens rea* of the requested charges. The Court is once again being called to speculate

and assume the reports are false. Probable cause is not established by speculation. *Mens rea* is determined by evidence including the facts and circumstances.

The alleged crimes that the Affiant and Counsel want former President Trump and Senator Vance to be arrested for require a knowing and/or knowingly or a reckless disregard *mens rea*. The Court considers the Affiant's averment in paragraph 52 and paragraph 7 to be inaccurate and misleading. The evidence submitted in the above listed paragraph/exhibits on the flash drive is, if anything, exculpatory as the exhibits tend to exonerate Former President Trump and Senator Vance of the requisite *mens rea* in the allegations. Once again the Court is left to speculate as to the exculpatory strength of the constituent accounts that are mentioned in the paragraph/exhibits. The evidence submitted by the Affiant tends to show that former President Trump and Senator Vance relied upon reports made to them by constituents. The Affiant bears the burden of production/proof to establish probable cause. The above listed evidence tends to negate probable cause as to the element of the *mens rea* required in the requested charges. *Mens rea* usually must be established by the facts and circumstances. The facts and circumstances as set forth in the materials do not, in the opinion of this Court, establish probable cause of the requisite *mens rea* for the requested charges. The submitted materials do not establish probable cause that the statements are false. The submitted materials also do not establish that the statements are true. Speculation does not establish probable cause.

The Affiant also claims "Trump's statements regarding the Springfield Haitian community have caused multiple bomb and other threats, closure and other disruptions." (paragraphs 86, 91, 92, 93, 94 and 95). Causation is also an element of a number of the requested charges. The Ohio Jury instructions defines CAUSE as follows: "Cause is an essential element of the offense. Cause is an act or failure to act that in a natural and continuous sequence directly produces the (death) (physical harm to (person) (property), and without which it would not have occurred.....The defendant's responsibility is not limited to the immediate or most obvious result of the defendant's (act (failure to act). The defendant is also responsible for the natural and foreseeable (consequences) (results) that follow, in the ordinary course of events, from the (act) (failure to act)." Ohio Jury Instructions CR 417.23 Cause; natural consequences.

The materials indicate there were 33 bomb threats in the days following the debate where the former President made the statements at issue. The materials contain very little information as to the exact threats other than to label all of them as hoaxes. The Affiant seems to contend that due to the threats being in close proximity to the statements that probable cause as to causation is established. The materials submitted by the Affiant do contain some insight into the threats. Governor DeWine does have information concerning the investigation into the threats that he has made public. The Governor gave us the following information as contained in paragraph 47 of the flash drive submitted by the Affiant:

> "....33 bomb threats – each one of which was responded to and found to be a hoax – 33 threats – 33 hoaxes.....We have people, unfortunately overseas, who are taking these actions. Some of them are coming from one particular country. We think this is one more opportunity to mess with the United States and they are continuing to do it so we cannot let the bad guys win. Our schools must remain open."

The Governor later declined to identify what country the threats were coming from.

The Governor later gave some additional information in an interview conducted on the PBS News Hour (see flash drive exhibit 63).

> "....Some of the bomb threats came from foreign countries – others came from in the United States. All of them have been hoaxes. None of them have panned out.....
>
> .....Now look the people who are making these threats are the bad people – they are the wrong people. Some come from overseas who want to mess with the United States. We have some coming from within the United States from people who are sick - who think for some reason this is funny."

The interviewer then interrupted the Governor and asked him if the statements stopped would the threats stop. The Governor replied that he could not predict what would happen.

The first inquiry the Court must make is whether "in a natural and continuous sequence would the threats have been made without the statements. The second inquiry is whether the threats are the natural and foreseeable result that would follow in the ordinary course of events. There are limits under the law to what the Court would refer to as the causal chain. The question is how far that chain extends when potentially inflammatory remarks are made and bad things follow. The only evidence before the Court is

that the threats were made from foreign countries and/or overseas who want to mess with the United States and some coming from the United States "from people who are sick." There is nothing in the record to indicate the bomb threats were made by any local individuals. Is there probable cause to believe these threats were natural and foreseeable consequences by former President Trump and Senator Vance?

The Court notes the Governor indicated he could not predict what would happen if the statements stopped. The inquiry has some far reaching implications in political discourse in the United States and the implementation of criminal statutes. The inquiry could be made in a large number of situations. There were calls to hold President Biden responsible for his comment to "time to put Trump in a bullseye" when the attempted assassination occurred. There were calls to hold Senator Sanders responsible for comments made and one of his volunteer campaign staffers shot Congressman Scalise and other individuals at a Congressional softball practice. This Court strongly believes that President Biden and Senator Sanders did not cause those events. The Court also believes that time proximity alone cannot establish probable cause of legal causation in this case. There is nothing that is the "natural and foreseeable result that would follow in the ordinary course of events" when the threats that were made were from someone in a foreign country trying to "mess" with the United States and/or threats "coming from the United States 'from people who are sick.'" If someone was waiting to "mess with the United States" there is nothing in the record to indicate the threats would not have been made at a date and time in the future. This does not appear to be a "natural and continuous sequence" that directly produced the bomb threats and without which they would not have occurred.

The Court finds there is no probable cause established as to causation of the bomb threats stemming from the statements at issue.

The Affiant and Bench Memorandum also requests former President Trump be charged with Aggravated Menacing (O.R.C. 2903.21 (A) as a result of his statements that he would initiate deportations beginning with Springfield, Ohio. (see page 16, subsection (e) of the Amended Bench Memorandum and paragraph 146 of the Affidavit). The materials submitted on the flash drive contains a significant amount of information centered around the Temporary Protective Status Program.

It is the understanding of the Court that Temporary Protected Status is a temporary immigration status that allows foreign nationals to live and work in the United States for a limited time. According to the U.S. Citizenship and Immigration Services website the "Department of Homeland Security has extended through August 3, 2025, the validity of certain Employment Authorization Documents (EADS) issued to Temporary Protected Status (TPS) beneficiaries under the designation of Haiti." It is also the Court's understanding that the Secretary of the Department of Homeland Security, in consultation with agencies like the State Department designates the TPS time periods. The designation can be extended, re-designated or terminated by the above members of the Executive Branch of the United States. The Departments administering the Temporary Protective Status Program are under the direction/jurisdiction of the President of the United States.

The Affiant claims Former President Trump cannot order the deportation of legally admitted immigrants. The problem with Affiant's position is that the status is temporary. The Department of Homeland Security at this point has extended the Temporary Protected Status of individuals from Haiti until August 3, 2025 (see Agency's website). The evidence indicates the comments by President Trump are an indication of what he intends to do if he is elected to the Office of President of the United States of America. It appears that the President of the United States could order individuals from Haiti who are here under Temporary Protected Status as implemented under current guidelines to leave the United States or be deported after August 3, 2025. It also appears that, if elected he would have the authority to extend, re-designate or terminate the program at his discretion. If he decided to do any of the above he would be acting in his official capacity as President of the United States. The United States Supreme Court has re-affirmed the President of the United States has absolute immunity for any official acts that involve the core duties of the Office of President.

The statements at issue concerning deportation appear to be statements of intent as to how former President Trump intends to exercise his discretion on an immigration matter if he is elected to another term as President.

The crime of Aggravated Menacing requires that" the offender will cause serious physical harm to the person or property of the other person." Once again the affiant does not specify an individual victim. Deportation could be quite distressful to an individual who wishes to stay in the United States but does not rise to the level of serious physical harm as defined in Ohio Revised Code Section 2901.01 (A) (5). The vague allegation contained in the Affidavit does not rise to the level of probable cause that a violation of the Aggravated Menacing statute has occurred.

The Court finds that, based on the information provided in the Amended Bench Memorandum and the Affidavit that probable cause DOES NOT EXIST and/or is not meritorious as to the charges that the Affiant is requesting to be filed against former President Trump and Senator Vance.

The Court will now turn its attention to the question of whether the Court has reason to believe that the action was not filed in good faith. The Court has a number of concerns regarding the filing of this action.

This action is filed within sixty days of the Presidential election. The question always arises in such cases as to whether filings are filed in a manner to affect an election without giving the accused sufficient opportunity to defend the action before an election occurs. There was a significant amount of material submitted to review in this case. It took many hours to adequately review and consider the points made.

The original Bench Memorandum asks the Court to "forthwith issue warrants for Trump's and Vance's arrests." It goes on to state "This should be done before Trump fulfills his threat to visit Springfield.....so that he may be arrested upon arrival for his criminal acts." It should be the goal of Counsel that this action is evaluated thoroughly and that a fair resolution be obtained. It should not be to influence where a Presidential and/or Vice Presidential candidate chooses to campaign. It should not be to stage an event where a Presidential and/or Vice Presidential candidate can be arrested if they arrive in Clark County, Ohio.

The language used to advocate for the action is troubling to the Court. It is noted that she interprets former President Trump's announcement that the will visit Springfield as a "threat." The Court

does not interpret the announcement, which I saw in the materials as a "threat." The Bench Memorandum and Affidavit constantly refer to the statements in issue as "lies", As noted in the Court's decision the evidence produced does not even establish probable cause that the statements are false much less "lies".

The Court is also concerned about Counsel's statements concerning the Prosecuting Attorneys that serve this community. There is nothing in the filing that indicates Counsel has even spoken to a local Prosecutor about his concerns and apparently has no knowledge as to what, if any investigation they may or may not have done in the matters of concern. The Affiant's Bench Memorandum states:

> …"prosecuting attorneys must make a public and transparent decision about whether they stand for the rule of law – or whether they will, by their complete inaction, further coddle Trump and Vance and afford them special treatment that no one else who had wreaked such havoc would be afforded." (page 6 Amended Bench Memorandum).

The Affidavit goes on in paragraph 156:

> "It is our hope and expectation that neither the judiciary nor prosecutors in Springfield will treat Trump and Vance as being above the law. We know if anyone else had wreaked the kind of havoc Trump and Vance have wreaked in Springfield, they would have been prosecuted by now."

This case revolves around what have been characterized as false and inflammatory comments by former President Trump and Senator Vance. The comments about the Prosecuting Attorneys have nothing to do with the issues that were submitted to the Court for determination. The Court finds it interesting that Counsel would make what the Court would consider to be false and inflammatory comments about the Prosecuting Attorneys who serve Clark County, Ohio. The above statements by Counsel and the Affiant could however, make for interesting quotes in the media.

The Court, as noted in this decision, is particularly concerned about Counsel and the Affiant's statements that Senator Vance admitted "just making harmful statements up." The Court considers this to be a significant mischaracterization of the evidence submitted to the Court.

This action is filed by four Counsel. The Court has pointed out what the Court believes to be glaring deficiencies in the requested charges. Counsel states "Further investigation is neither needed nor requested." The Court respectfully could not disagree more.

The Court finds, pursuant to Ohio Revised Code §2935.10 (A) that this Judge "has reason to believe that it (the requested action) was not filed in good faith". The Court also finds, pursuant to Ohio Revised Code §2935.10 (A), that the claim is "not meritorious". Both findings are for the reasons set forth in this concurring opinion.

Having made the above findings, Ohio Revised Code §2935.10 leaves this Court with only one option. The Court hereby refers the matter to the Clark County Prosecuting Attorney for investigation.

Stephen Schumaker, Judge