

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

FILED

2005 NOV 23 10 A 8 31

Central Committee of the Hamilton
County Republican Party,

Plaintiff,

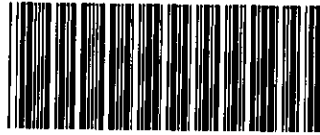
v

Michael E Dalton,

Defendant

CASE NO A0509834

(Judge Winkler)



D66181241

**DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S
MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

Defendant requests that this Court deny plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction for the reasons set forth below

BACKGROUND

Michael Dalton created a web page to express his displeasure against the Republican Party in Hamilton County. In choosing a domain name for his website, he picked a name that reflected the subject of his site – hamiltoncountyrepublicanparty.com¹. The website is strongly critical toward Republicans, and no reasonable viewer of the page would mistake it for an official Hamilton County Republican Party site. In response to this lawsuit, Dalton made it even more obvious that the site is not affiliated with the Republicans by adding a prominent disclaimer to the top of the web page. See Affidavit attached to this memorandum. Dalton

¹ Dalton also registered the related domain names hamiltoncountyrepublicanparty.net, hamiltoncountyrepublicanparty.info, hamiltoncountyrepublicanparty.us, hamiltoncountyrepublicans.org, and hamiltoncountyrepublicans.com. All the domain names registered by Dalton are directed to the same webpage.

makes no money from the website, and uses it solely as a forum to express his personal political views *Id*

The Hamilton County Republican Party now seeks a temporary restraining order and preliminary injunction against Dalton's further use of his website. Plaintiff's motion should be denied for several related reasons. First, a restraining order preventing Dalton from continuing to maintain his political website would constitute a prior restraint on speech that would offend core First Amendment principles. Second, plaintiff seeks relief against political speech under the state common law of trademark, when the relevant law covers only speech made in the course of a defendant's "business, vocation, or occupation." Third, although plaintiff relies heavily on federal court decisions to show that trademark law would apply here, it fails to cite the Sixth Circuit decision that is most directly on point, *Taubman v WebFeats*, 319 F.3d 770, 774 (6th Cir. 2003). *Taubman* establishes that trademark law is not implicated when a website is devoted to criticizing the holder of a trademark and is not reasonably likely to confuse anyone. Fourth, plaintiff fails to satisfy any of the factors necessary to obtain a temporary restraining order or preliminary injunction. Finally, the injunction sought by the plaintiff in this case is overly broad and is not narrowly tailored to preserve Dalton's First Amendment rights.

ARGUMENT

A. The Requested Temporary Restraining Order Would Infringe Dalton's Free Speech Right to Describe the Subject of His Criticism

Dalton's speech is indisputably protected by the First Amendment. Plaintiff's trademark claims seek government action by a court, which is subject to First Amendment scrutiny. *Organization for a Better Austin v Keefe*, 402 U.S. 415, 418 (1971). Where a defendant is engaged in noncommercial speech, mere application of trademark law may violate the First Amendment. *L.L. Bean v Drake Publishers*, 811 F.2d 26, 32-33 (1st Cir. 1987). Even when

trademarks have been used in a commercial context, courts still construe the trademark laws narrowly to avoid impingement on First Amendment rights. *E.g., Cliffs Notes v Bantam Doubleday*, 886 F.2d 490, 494 (2d Cir. 1989). When an action is brought against plainly noncommercial uses of trademarks for political commentary, courts have not hesitated to afford full First Amendment protection against the trademark holder's claim, either by holding that First Amendment principles bar application of the statute, or by holding that a state law is unconstitutional on its face or as applied in the particular case.² Dalton's website is just the sort of political commentary that courts assiduously protect. Dalton's criticisms would be pointless if he had to omit the name of the Hamilton County Republican Party, yet the injunction sought by the plaintiffs would altogether forbid Dalton's use of the marks.

Furthermore, it is not just the website generally, but Dalton's use of plaintiff's trademark in his domain name, that constitutes protected speech. The Sixth Circuit and other courts have held that the use of trademarks constitutes speech protected by the First Amendment, even when used only to designate source. *Sambo's Restaurants v Ann Arbor*, 663 F.2d 686, 694 (6th Cir. 1981), *see also, e.g., Bad Frog Brewery v New York Liquor Auth.*, 134 F.3d 87, 94-97 (2d Cir. 1998). Using trademarks in domain names is analogous to using trademarks in book titles, to which the courts give First Amendment protection because they are part of the authors' expression and call attention to the fact that the works in question contain content on those topics. *E.g., Twin Peaks Production v Publications Int'l*, 996 F.2d 1366, 1379 (2d Cir. 1993), *Rogers v Grimaldi*, 875 F.2d 994, 999 (2d Cir. 1989). *Accord Mattel v Walking Mountain*

² *E.g., L.L. Bean v Drake Publishers*, 811 F.2d 26, 33 (1st Cir. 1987), *Bally Total Fitness Holding Corp v Faber*, 29 F. Supp. 2d 1161, 1167 (C.D. Cal. 1998); *ACLU of Georgia v Miller*, 977 F. Supp. 1228, 1233 (N.D. Ga. 1997), *Lighthawk v Robertson*, 812 F. Supp. 1095, 1097-1101 (W.D. Wash. 1993), *Stop the Olympic Prison v United States Olympic Comm.*, 489 F. Supp. 1112, 1124-1125 (S.D.N.Y. 1980).

Prods, 353 F.3d 792, 807 (9th Cir. 2003). Indeed, it is precisely because of the expressive content in Dalton's domain name that plaintiffs object to its use. Domain names exist to provide memorable identifiers to help Internet users identify websites in which they are interested. Dalton's use of his domain names communicates to web users that his site contains information about the Hamilton County Republican Party. Therefore, the domain name is "speech" to which the First Amendment applies. See *Ficker v Tuohy*, 305 F. Supp. 2d 569, 572 (D. Md. 2004) (denying a preliminary injunction demanded by congressional candidate Robin Ficker against an opponent in a Republican primary who maintained the critical website robinficker.com, and recognizing the "First Amendment's particularly important role in political campaigns")

The Supreme Court has repeatedly held that injunctions barring defendants from speaking, printing, or broadcasting statements about topics of public concern are prior restraints that require the most extraordinary justifications before they may be approved. *New York Times v. United States*, 403 U.S. 713 (1971), *Near v. Minnesota*, 283 U.S. 697 (1931). When an injunction is entered based on a finding of likelihood of success in establishing illegal speech, instead of a final adjudication, it is a prior restraint subject to strict First Amendment scrutiny. *Auburn Police Union v. Carpenter*, 8 F.3d 886, 903 (1st Cir. 1993), see also *Carroll v. Commissioners of Princess Anne*, 393 U.S. 175 (1968). The law is clear and unequivocal – prior restraints are not permitted except in the most exceptional circumstances, involving "a grave threat to a critical government interest or to a constitutional right." *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 225 (6th Cir. 1996), 6 Ohio St.3rd 304, 307 (Ohio 1996) (noting the "heavy presumption" against prior restraints on speech). No such circumstance is present here, and thus the preliminary injunction should be denied.

B. Plaintiff is Unlikely to Succeed in its Trademark Infringement Claim

Prior to obtaining a temporary restraining order or preliminary injunction, a plaintiff must demonstrate that it is likely to succeed on the merits of the case *City of Cleveland v Cleveland Electrical Illuminating Co*, 115 Ohio App 3d 1, 12 (Ohio Ct App 1996) Plaintiff cannot demonstrate a likelihood of success under the trademark law against a site that is both noncommercial and not confusing

1. The Trademark Laws Do Not Apply to Dalton's Noncommercial Use of a Trademark

Trademark law creates a commercial tort The limitation of trademark law to commercial uses appears in the statutory language and case law, and its existence follows from the limitations that the First Amendment places on the exercise of government authority restricting free speech. *Taubman*, 319 F 3d at 774 The Ohio common law of trademark infringement is codified in the Ohio Deceptive Trade Practices Act *Worthington Foods, Inc v Kellogg Co*, 732 F Supp 1417, 1431 (S D Ohio 1990). Although plaintiff acknowledges this fact, *see* Plaintiff's Memorandum at 7, it nowhere quotes the relevant statutory language, which on its face covers only conduct occurring "in the course of the person's business, vocation, or occupation" Ohio Rev Code § 4165 02(A) The plain language of the Act is not implicated here, where the defendant's use of the plaintiff's mark is for political, rather than commercial, purposes

Similarly, although plaintiff relies heavily on federal cases interpreting the Lanham Act as a guide to interpreting Ohio's law of trademark infringement, it fails to cite the leading Sixth Circuit case on the issue – *Taubman v WebFeats*, 319 F 3d 770. *Taubman* involved a consumer who criticized a neighboring shopping mall called "Shops at Willow Bend" on a website he established at shopsatwillowbend.com Judge Suhrheinrich's opinion for the panel held that any

use of a mark not “in connection with the sale . . . or advertising of any goods or services” fell outside the jurisdiction of the Lanham Act and was protected by the First Amendment *Id* at 774-75. The court further held that the defendant’s use of the plaintiff’s trademark in his domain name for the purpose of criticism did not constitute commercial use under the Act *Id*. The court concluded that, even if visitors to a website would likely be confused as to the site’s origin, the trademark laws were inapplicable so long as there was no confusion as to the origin of the parties’ *goods and services*. *Id*.³ Similarly, the court in *Bosley Medical Institute, Inc v Kremer*, held that the defendant’s use of the domain name bosleymedical.com to criticize Bosley Medical Institute, Inc did not implicate the Lanham Act, because the defendant used the domain name solely to criticize the company and not to offer goods and services for sale. 403 F.3d 672, 679-80 (9th Cir. 2005).

The limitation of trademark law to commercial situations follows from the distinctions that First Amendment law draws between commercial and noncommercial speech. The fundamental precept of trademark law is that it prevents uses of trademarks that are misleading, in that they are “likely” to be “confusing” to consumers. *Moseley v V Secret Catalogue*, 537 U.S. 418, 429-430 (2003). To constitute infringement, use of the trademark need not be deliberately confusing, and it need not actually constitute a “false” statement of origin. Because these standards do not meet the First Amendment’s requirements for prohibiting noncommercial

³ See also *CPC Int’l v Skippy Inc*, 214 F.3d 456, 461-62 (CA4 2000) (the purposes of the trademark laws are related to giving consumers accurate information about commercial products and do not prevent critics from commenting on commercial products), *White v Samsung Electronics America*, 971 F.2d 1395, 1401 (CA9 1992) (rules against exploitation of personality permissible under First Amendment because of commercial speech context), *E&J Gallo Winery v Gallo Cattle Co*, 967 F.2d 1280, 1297 (CA9 1992) (trademark injunction permissible because it limits commercial speech).

speech, the First Amendment provides an important reason to construe the trademark laws to apply only to commercial goods and speech. *See Taubman*, 319 F.3d at 774-75.

Dalton's website is patently noncommercial in character. The website is dedicated to the communication of opinions and information about the Hamilton County Republican Party. It contains no advertisements. *See Affidavit*. Dalton devotes his site entirely to the expression of his personal political views. *Id.* Dalton never sold any good or services on his website, and never received any revenue of any kind for the content of his website. *Id.* Nor has Dalton ever offered to sell his domain names to the plaintiff or to anyone else. *Id.* Moreover, not only is Dalton not engaged in commercial speech, but he is not even criticizing a commercial product or a commercial company. Dalton's website is devoted to a discussion of political issues, with no nexus to commerce or economic activity. The trademark laws are thus entirely inapplicable to his conduct.

2. Viewers are Unlikely to be Confused About Whether the Hamilton County Republican Party Sponsors Dalton's Website

To succeed on a claim of trademark infringement, a plaintiff must show "likelihood of confusion." *Worthington Foods, Inc. v. Kellogg Co.*, 732 F. Supp. 1417, 1432 (S.D. Ohio 1990). Dalton's website is not confusing and does not suggest that it is sponsored by the Hamilton County Republican Party. The site prominently contains a disparaging picture of President Bush, and is devoted entirely to criticism of Republican judges. In this context, no reasonable person would believe that the website was actually sponsored by the Republican Party.⁴

⁴ Plaintiff argues that Dalton's use of the Republican Party elephant logo near the bottom of his website, accompanied with the text "Make a Concealed Contribution," misleadingly implies that users can make a donation to the Hamilton County Republican Party from his website. However, this portion of the site is an obvious parody, stating that visitors may make a *concealed* contribution to the party, and includes a link to a news story regarding an alleged concealed contribution made by the Hamilton County Republican Party to the state treasurer's campaign.

Furthermore, in response to this litigation Dalton added a prominent disclaimer to the top of his web page stating “This is an unofficial site and critical of the republican party It is not sponsored by, affiliated with, or related to any political party.” See Affidavit The disclaimer provides links to official Hamilton County Republican Party websites The use of a disclaimer and a link to the official site were cited by the court in *Taubman* in holding that the defendant’s use of the plaintiff’s mark was not likely to cause consumer confusion *Taubman*, 319 F 3d at 776

The fact that Dalton uses the name of the Hamilton County Republican Party in his domain name does not make the website any more confusing Domain names often designate the subject of websites, not just their source Consequently, numerous federal courts have held that trademarks may be used as domain names for websites that are about markholders or about trademarked goods or services, even sites that are operated by persons other than the markholders, because the names do not occasion confusion about source Thus, the court in *Taubman* found no likelihood of confusion even though the defendant used the plaintiff’s trademark – “Shops at Willow Bend” – in his domain name *shopsatwillowbend.com* *Taubman*, 319 F 3d at 772. Similarly, the Fourth Circuit in *Lamparello v Falwell* held that the defendant’s use of the domain name *fallwell.com* did not create a likelihood of confusion with Reverend Jerry Falwell, where the defendant used his website to criticize Falwell, and did not offer any

No visitor is likely to be misled by the elephant logo in this context, especially since the link is near the bottom of the page, where readers will see it only after they have been exposed to the anti-Republican nature of the website Plaintiff also suggests that another link directing visitors to the website of the Democratic Congressional Campaign Committee (“DCCC”) may lead people to mistakenly believe they are visiting a site supportive of the Republican Party However, the link to the DCCC site states “Tell Republicans Return DeLay’s Dirty Money” See Affidavit Nobody would click that link expecting to visit an official Republican website Furthermore, the DCCC site could not lead any reasonable viewer to believe that the

goods or services in competition with him 420 F.3d 309, 315 (4th Cir. 2005), *see also TMI v Maxwell*, 368 F 3d 433 (5th Cir 2004), *Lucas Nursery and Landscaping v Grosse*, 359 F 3d 806 (6th Cir 2004), *Ficker*, 305 F Supp 2d at 572, *Crown Pontiac v Ballock*, 287 F Supp. 2d 1256 (N D Ala 2003), *Northland Ins Co v Blaylock*, 115 F. Supp. 2d 1108 (D. Minn. 2000) The Seventh Circuit reached a similar result even in the commercial context in *Ty v Prettyman*, 306 F 3d 509 (2002) The decision in *Prettyman* overturned an injunction issued against an unauthorized reseller of Beanie babies who used the name “bargainbeanies.com” for her marketing website Because *Prettyman* was entitled under trademark law to tell the consuming public that she sold Beanie babies through her website, Judge Posner held that trademark law could not be used to deprive *Prettyman* of the right to truthfully identify the content of her website by placing the trademark “Beanie” in her domain name

Cases involving critical websites fall under the rubric of “nominative fair use,” where the speaker uses the trademark to speak about the trademark holder or its goods and services *Brookfield Communications v West Coast Video*, 174 F 3d 1036, 1065-66 (9th Cir 1999), *New Kids on the Block v New America Pub*, 971 F2d 302, 306-309 (CA9 1992) For example, the courts consistently hold that fair use, construed consistently with the First Amendment, allows publishers or authors of books or other expressive works about famous persons to use such persons’ names in the titles of the books *Twin Peaks Prod v Publications Int’l*, 996 F 2d 1366, 1379 (2d Cir 1993), *Rogers v Grimaldi*, 875 F 2d 994, 999 (2d Cir 1989), *Mattel v MCA Records*, 296 F.3d 894, 902 (9th Cir. 2002). Domain names can play the same role as book titles in denominating the subject of underlying websites. For example, “apples.com” is the domain name of a website about apples, not the website of Apple computer company Just as the title of

organization supports Republican candidates *See*

a book may use a trademark truthfully to describe the content of the book, so may Dalton use a trademark as a domain name truthfully to describe the contents of his website. As Justice Holmes said in *Prestonettes v Coty*, 264 U S 359, 368 (1924): “When the mark is used in a way that does not deceive the public, we see no such sanctity in the word as to prevent its being used to tell the truth. It is not taboo.”

Plaintiff relies on the multi-factor test laid out in *Cesare v Work*, 36 Ohio App 3d 26, 28 (Ohio Ct App 1987), and relied on by various cases in the Sixth Circuit. These factors, however, are merely a rough guide to determining the ultimate question in a trademark case: whether the defendant’s use of the mark creates a likelihood of confusion among customers as to the origin of the parties’ goods or services. Many of these factors are inapplicable when a defendant uses the plaintiff’s mark for the purpose of public criticism. See *Lamparello*, 420 F 3d 309, 315 & n 3 (noting that a website dedicated to criticism of the markholder “will seldom create a likelihood of confusion”). For example, the fact that Dalton’s use of the mark is identical to the plaintiff’s mark is not relevant here, because Dalton’s website is *about* the Hamilton County Republican Party and thus constitutes fair use. Indeed, similarity of marks will always be present when the defendant uses the plaintiff’s mark to identify the plaintiff as the target of criticism. Similarly, the strength of the plaintiff’s mark is not a relevant factor when a defendant uses the mark for the purpose of fair-use identification of the plaintiff. The strength of the plaintiff’s mark in this context only makes it easier for a defendant to publicly identify the target of his criticisms. And Dalton’s use of the Hamilton County Republican Party’s name is not evidence of an intent to confuse, but merely of an intent to identify the subject of his criticism. To hold otherwise would be to say that any fair use would support a finding of bad

<http://www.dccc.org/campaignforchange/petitions/armpac/default/>

intent⁵ In short, the test set forth in *Cesare* is simply inapplicable in the context of political criticism, and the court need not rely on these factors if it determines that the defendants' use is not likely to cause confusion. See, e.g., *Taubman*, 319 F.3d at 776-77 (finding no likelihood of confusion in analyzing a website devoted to criticism of a company based on the website's use of a disclaimer)

Those factors of the *Cesare* test that are arguably relevant in this context weigh in favor of Dalton. First, the services of Dalton and the plaintiff are not related, because the Hamilton County Republican Party is a political party, while Dalton's website is merely a forum in which to express his political opinions. Dalton does not compete with the Republican Party in any way other than by expressing political ideas that are contrary to those held by the Party. See *Lamparello*, 420 F.3d at 315 & n.3 (holding that consumers are unlikely to be confused by a website that offers only criticism and no competing goods or services). Second, plaintiff has not produced any evidence of actual confusion. Third, plaintiff argues that the likely degree of consumer care weighs in its favor, but presents no evidence of this. It is difficult to believe, especially after the addition of a disclaimer, that even the most careless consumer could be confused as to the fact that Dalton's site is critical toward the Hamilton County Republican Party. On the contrary, courts recognize the increasing sophistication of Internet users and their ability to find what they want when a first web visit does not meet their expectations. *Entrepreneur Media v. Smith*, 279 F.3d 1135, 1147 (9th Cir. 2002) ("[C]onsumers are aware that domain names for different Web sites are often quite similar . . . and that very small differences matter"), *Strick Corp. v. Strickland*, 162 F. Supp. 2d 372, 377 (E.D. Pa. 2001). The remaining two factors – the marketing channels used and the likelihood of expansion of product lines – are

⁵ Dalton's inclusion of content strongly critical of the Republican Party and his addition of a

impossible to apply in this context, where the defendant does not sell or market any products or services on his website

C. The Remaining Preliminary Injunction Factors Also Favor the Defendant

In addition to demonstrating a likelihood of success on the merits, the plaintiff must also establish several other factors to obtaining a temporary restraining order or a preliminary injunction. First, plaintiff must establish that “the issuance of the injunction will prevent irreparable harm.” *City of Cleveland*, 115 Ohio App. at 12. Plaintiff claims that it will be irreparably harmed by the continued existence of Dalton’s website. However, plaintiff has an adequate remedy at law for any continued infringement in the form of money damages. Furthermore, plaintiff’s claim of irreparable injury is undercut by its issuance of a November 18 press release regarding Dalton’s website in which it identifies the allegedly infringing domain name. *See* Affidavit. The fact that the plaintiff is advertising the allegedly infringing website and thereby drawing more visitors to the site belies the urgency of its requested injunctive relief. *Id.*

Second, plaintiff must show that balance of the equities weighs in its favor. *Id.* Plaintiff argues that the equities favor its side because it has used the mark in commerce for longer than Dalton. However, this would be the case any time a defendant used an established mark for the purpose of criticism. The balance of equities actually favors Dalton in this case because, if an injunction were granted, the plaintiff would benefit little from the removal of a site that is not confusing, while Dalton would suffer a very serious prior restraint on his right to free speech. *See Ficker*, 305 F. Supp. 2d at 571 (recognizing the defendant’s freedom of speech rights in balancing the equities of enjoining a political website). In the absence of an injunction, however,

disclaimer further negate any inference of intent to confuse visitors to his website

both parties will be able to continue to openly express their political views on their respective web pages. Further, Dalton's inclusion of a link at the top of his page ensures that visitors to his site will easily be able to find the official Hamilton County Republican Party webpage. *See id.* at 571-72 (holding that the balance of equities clearly favored the defendant where the allegedly infringing website included a disclaimer and a link to the official site). As the court in *Taubman* recognized, the presence of such a link may actually benefit the owner of the trademark by "serving to re-direct lost customers to [the plaintiff's] site that might otherwise be lost." *Taubman*, 319 F.3d at 777. Furthermore, plaintiff's equitable argument is undercut by the fact that it is responsible for increasing hits to the allegedly infringing website with its November 18 press release.

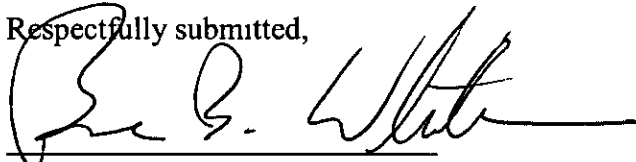
Finally, plaintiff must show that the public interest will be served by the granting of the requested restraining order. *City of Cleveland*, 115 Ohio App.3d at 12. Plaintiff argues that a restraining order would advance the general purpose of the trademark law to prevent consumer confusion. However, as already explained, Dalton's site is not likely to confuse anyone, and contains a link to the Hamilton County Republican Party's official site. Furthermore, the public interest is not served by restraining free political debate. *Ficker*, 305 F. Supp.2d at 572 (concluding that the public interest in preventing confusion is undercut by the interest in preventing encroachment on the right to free speech).

D. The Injunction Demanded by Plaintiff is Overly Broad

Even if an injunction were appropriate, the First Amendment requires that the least intrusive remedy should be selected, even in the commercial context, but especially where otherwise protected speech is involved. *CPC v. Skippy*, 214 F.3d 456, 461 (4th Cir. 2000), *Anheuser-Busch v. Balducci Pubs.*, 28 F.3d 769, 778 (8th Cir. 1994), *Better Business Bureau v.*

Date Nov. 23, 2005

Respectfully submitted,



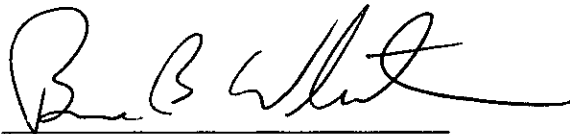
Bruce Whitman (0003662)
Special Counsel for Argument on
the Temporary Restraining Order
3536 Edwards Road, Suite 100
Cincinnati, Ohio 45208
(513) 321-3940

Gregory A. Beck
DC Bar No 494479
Paul Alan Levy
DC Bar No 946400
Public Citizen Litigation Group
1600 20th Street, NW
Washington, DC 20009
(202) 588-1000

Attorneys for the Defendant, Michael Dalton

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon Martin J Miller,
Dinsmore & Shohl, attorneys for Plaintiff, 255 East Fifth Street, Suite 1900, Cincinnati, Ohio
45202, by hand-delivery on November 23, 2005



Bruce Whitman (0003662)
Special Counsel for Argument on
the Temporary Restraining Order

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

CENTRAL COMMITTEE OF THE : Case No. A0509834
HAMILTON COUNTY :
REPUBLICAN PARTY : (Judge Winkler)
Plaintiff, : AFFIDAVIT OF
 : MICHAEL DALTON
vs. :
MICHAEL E. DALTON :
Defendant. :

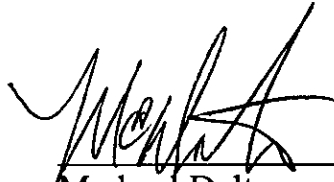
STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

- 1) I am Michael Dalton, the Defendant in this matter.
- 2) The Hamilton County Republican Party only began to use the domain “hamiltoncountyrepublicanparty.org” in February of 2005. Before that time, the web site was “rp-hamilton.com.” Attached to this Affidavit are the web site pages for “hamiltoncountyrepublicanparty.com” (Exhibit A) and “hamiltoncountyrepublicanparty.org” (Exhibit B).
- 3) It is obvious and clear that there could not possibly be any confusion between the two web sites

- 4) As soon as I became aware of this lawsuit, I placed a clear and obvious disclaimer on the front page of my web site.
- 5) I have not offered any goods or services for sale on my web site.
- 6) I have not received any revenue of any kind for any content of the web site.
- 7) The web site is devoted strictly and entirely to the expression of my personal political views.
- 8) The caption "Make a Concealed Contribution" on my web site is linked to a news story in the Cincinnati Enquirer about the Hamilton County Republican Party being ordered to forfeit a \$50,000 concealed contribution that it had received. The caption "Tell Republicans: Return DeLay's Dirty Money" is linked to a petition on the web site of the Democratic Congressional Campaign Committee that viewers are urged to send protesting the use of campaign contributions raised by Representative Tom DeLay.
- 9) Data received from my Internet Service Provider reveals the number of web site daily blog visitors in November spiked from 20 or 30 daily visitors to 365 visitors two days later, on November 20, 2005. (Exhibit C).
- 10) The spike in the number of visitors to my web site came after Plaintiff issued a press release that contained the URL for my web site, and the local media

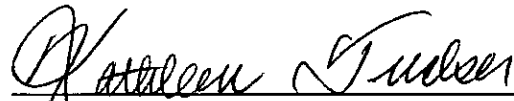
in response, carried a story about the site. A copy of their press release is attached as Exhibit D.

11) Further, Affiant saith naught.



Michael Dalton

Sworn to before me and subscribed in my presence this 22nd day of
November, 2005.



Notary Public, State of Ohio

6-1-06
KATHLEEN TUCKER
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 10-21-06
11

This is an unofficial site and critical of the republican party.
It is not sponsored by, affiliated with, or related to any political party.
The official sites are located at: / [Hamilton County, IN](#) / [Hamilton County, OH](#) / [Hamilton County, TN](#)

Why the Hamilton County Republican Party's Actions Show that Judges Stockdale and Allen Lack Integrity



Wrong Wing Outed

Useful Links that Show the Truth

[Wrong Wing Pizza](#)

[True 'Moral' Majority](#)

[Shake & Bake](#)

[Smears, Lies, and Videotape](#)

Ohio Republican Party suggests

judges

"Stockdale" and "Allen" lack Integrity ?

Recent Blog Post

To: whistleblower@cinci.rr.com

Sent: Thursday, November 03, 2005 8:23 PM

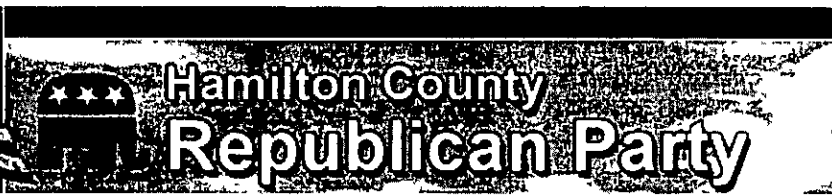
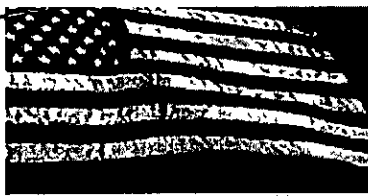
Subject: Hamilton County Municipal Court Judge Lisa Allen Charged with "Theft" ?

When Judge Lisa Allen can't "Shoot the Messenger" she steals the message. Opponent, Jonathan Dameron, has been campaigning on the platform that Lisa Allen is chronically late. Dameron claims Allen, the wife, (or former wife, no one knows) of the courthouse adulterer, Michael Allen, is habitually late for court while police, victims, attorneys and defendants are all waiting for her to show up "Late again"

It is a well know joke at the courthouse and guaranteed to bring a laugh when anyone asks: "Was Allen on Time today ?"

Well, the Cincinnati Bar association, on Allen stated: "..... some expressed concerns about her punctuality."

Allen, whom the convicted "Taft" appointed once, could not shake the trail of tardiness, so she



- ◆ HOME
- ◆ NEWS
- ◆ EVENTS CALENDAR
- ◆ ACTION CENTER
- ◆ ISSUES
- ◆ LINKS
- ◆ ELECTED OFFICIALS
- ◆ CANDIDATES
- ◆ CONTACT US

Hamilton County Republican Party

Letter from Chairman George H. Vincent



George H. Vincent

On behalf of the Hamilton County Republican Party, thank you for visiting our web site. Our site is designed to provide you with the most up-to-date information on the Republican Party and Hamilton County. We hope you find this site to be a valuable resource to your involvement in the political process.

Please take time to visit our Action Center to learn how you can be involved in our Party and help to promote Republican ideas and candidates. Sign up to receive regular email updates from us and find out about upcoming events by viewing our event calendar. Our Elected Officials section will connect you with local, state, and national Republican officials, and our Issues page will keep you informed of candidates, upcoming elections, and important community issues.

Due to your support this year, Republicans were able to maintain crucial seats in Municipal Court and on City Council. Every candidate put forth a tremendous effort towards their campaign. The candidates in the townships, cities and villages also delivered remarkable results after campaigning to strengthen Republican grassroots. In addition, we defeated four state issues that would dramatically change the Ohio constitution and the election process. These victories prove the Republican Party is energized and has strong momentum going into 2006.

As we look at the challenges ahead in 2006, we will continue to build on the volunteer enthusiasm, which was so crucial to re-electing President Bush in 2004. This year we will elect officials to county and statewide offices, which have the most direct impact on the citizens of Hamilton County.

I'm counting on your support this year to help elect

Action Center

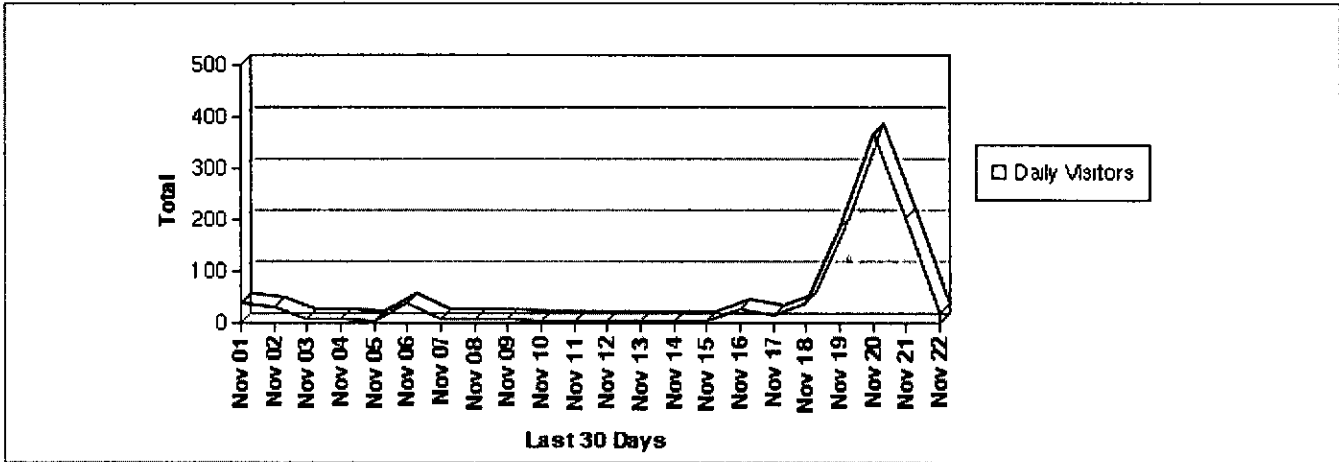
- Volunteer
- Donate
- Register to
- E-mail Sig

Upcoming Events

- North College Republican
Tue, Nov 22,
- Delhi Towns Republican
Tue, Nov 22,
- Blue Chip Y. Republican
Mon, Nov 28
- Norwood Re Club
Mon, Nov 28
- Harrison Re Club Meet th
Candidates'
Tue, Nov 29,
- Fundraiser f
House of
Representat
Tue, Nov 29,
- Colerain To
Republican
Holiday Part
Thu, Dec 1, 2
- Hamilton Co
Republican
Holiday Part
Fri, Dec 2, 20
- Congressw
Schmidt's H
Sat, Dec 3, 2
- Schmidt for
Breakfast Fi
Mon, Dec 5,

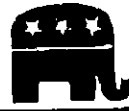
[More Events](#)

Subj **Stats on blog board for Nov.**
 Date 11/22/05 1 25 25 PM Eastern Standard Time
 From DALTONME@hotmail.com
 To plevy@citizen.org, gbeck@citizen.org, Bbwhits123@aol.com



Date	Number of Visits
November 01, 2005	38
November 02, 2005	30
November 03, 2005	8
November 04, 2005	6
November 05, 2005	5
November 06, 2005	38
November 07, 2005	8
November 08, 2005	6
November 09, 2005	9
November 10, 2005	3
November 11, 2005	5
November 12, 2005	4
November 13, 2005	3
November 14, 2005	4
November 15, 2005	5
November 16, 2005	27
November 17, 2005	17
November 18, 2005	38
November 19, 2005	185
November 20, 2005	369
November 21, 2005	204
November 22, 2005	20
Total	1,032

Hamilton County Republican Party



GEORGE H VINCENT
Chairman

BRUCE A. TAYLOR
Vice-Chairman

THOMAS L. NEYER, JR.
Finance Chairman



www.hamiltoncountyrepublicanparty.org

700 Walnut Street, Suite 309
Cincinnati, Ohio 45202-2072
513/381-5434
FAX: 513/477-3545

November 18, 2005

* PRESS RELEASE *

FOR IMMEDIATE RELEASE

REPUBLICAN PARTY FILES LAWSUIT TO SHUT DOWN PHONY WEBSITE

Today, the Hamilton County Republican Party filed a motion for a temporary restraining order and preliminary injunction to shut down a phony website. The lawsuit was filed in Hamilton County by attorneys from the law firm of Dinemore & Shohl against defendant Michael Dalton.

Michael Dalton operates a website using the address www.HamiltonCountyRepublicanParty.com. Dalton is not associated with the Hamilton County Republican Party and his website contains messages critical of the Republican Party and Republican officials. The official website of the Hamilton County Republican Party is www.HamiltonCountyRepublicanParty.org.

STATEMENT OF EXECUTIVE DIRECTOR BRAD GREENBERG

"Mr. Dalton is trying to hijack our good name. His use of our name is dishonest and deceptive. We will take all necessary legal steps to protect our name and shut down this phony website."

For further information, contact Brad Greenberg at 209-8477.

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