

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, COUNTY DIVISION**

BOARD OF ELECTION COMMISSIONERS OF THE  
CITY OF CHICAGO, LANGDON D. NEAL,  
RICHARD A. COWEN, and THERESA M. PETRONE,

Plaintiffs,

v.

HANS BERNHARD, LUZIUS A. BERNHARD,  
OSKAR OBEREDER, CHRISTOPH JOHANNES  
MUTTER, JAMES BAUMGARTNER and DOMAIN  
BANK, INC.,

Defendants.

No. 00 CE 31

Judge Michael Murphy

DOROTHY BROWN  
CLERK

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
COUNTY DIVISION

01 APR -2 AM 9:00

FILED

**MEMORANDUM IN SUPPORT OF DEFENDANT BAUMGARTNER'S  
MOTION TO VACATE PRELIMINARY INJUNCTION**

**Introduction**

James Baumgartner, a graduate student at Rensselaer Polytechnic Institute ("RPI"), created the Internet web site Voteauction.com for his master's degree thesis in Electronic Art. *See* Defendant Baumgartner's Verified Answer and Counterclaim (hereafter "Counterclaim") at par.6; Baumgartner Affidavit (hereafter "Def. Aff.") at par. 3<sup>1</sup> In launching Voteauction.com, Baumgartner's chief intention was to comment critically and generate discussion on what he perceived to be a major problem in American government: the ability of corporate interests to buy political candidates. Counterclaim at pars. 6-8; Def. Aff. at pars. 3-6. He also meant to send a critical message about American consumerism by designing the web site as a parody of the on-line commercial market in which virtually anything can be put up for sale. Counterclaim at pars. 6,9; Def. Aff. at par. 8. No votes were actually bought or sold, or intended to be; rather, the "vote auction" construct was simply a creative vehicle for Baumgartner to communicate his

message and generate an ongoing, interactive conversation in cyberspace about these pressing concerns. Counterclaim at par. 6; Def. Aff. at par. 12. As such, Voteauction is political and artistic expression deserving of the highest First Amendment protection. *See* Memorandum in Support of Defendant Baumgartner's Combined Motions For, Alternatively, Dismissal, Judgment on the Pleadings, Or Summary Judgment (hereafter "Def. Mem. D/SJ") at Sections IA-C.

Plaintiffs -- the Board of Election Commissioners of the City of Chicago, and three individual Commissioners of the Board -- apparently were uneasy with even the tongue-in-cheek suggestion that elections can be bought and sold. *See* Complaint, Exh. A at 81 (Sherrif, *Votes for sale online in the US*, The Register, October 5, 2000) (citing plaintiff Langdon Neal). *See also* Counterclaim, Exhibits C and D. They filed suit in the Circuit Court of Cook County on October 16, 2000, seeking a preliminary injunction to close down Voteauction.com on the grounds that its operation violated various federal and state election and criminal laws. The Court granted the requested Preliminary Injunction on October 18, upon which Voteauction.com immediately was removed from the Internet and Baumgartner ceased to have any access to or control over the site.

Baumgartner now requests that this Court vacate the preliminary injunction. Baumgartner desires to reinstate Voteauction.com or a substantially similar web site to the Internet, to continue to broadcast his disdain for the election process and the commercialization of American democracy through such a vehicle, and to use the "vote auction" construct to continue to engage his site visitors in discussion and debate about these critically important issues, *see* Counterclaim at par. 28, Def. Aff. at par. 28, all of which the preliminary injunction prevents him from doing. This kind of censorship of political speech and assembly is flatly

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<sup>1</sup> The Baumgartner Affidavit is attached as Exhibit 1 to the Memorandum in Support of Defendant Baumgartner's Combined Motions For, Alternatively, Dismissal, Judgment on the Pleadings, Or Summary Judgment.

unconstitutional, and each day it continues compounds a grave injury for which there is no recompense. In another motion, filed and briefed separately, Baumgartner also asks this Court to dismiss the Complaint or award him judgment on the pleadings pursuant to Section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615), or, in the alternative, dismiss the Complaint pursuant to Section 2-619 (735 ILCS 5/2-619), or, in the alternative, award him summary judgment pursuant to Section 2-1005 (735 ILCS 5/2-1005).

Because Voteauction.com is satire and parody protected by the First Amendment, the preliminary injunction operates as an unconstitutional prior restraint on Baumgartner's and his site visitors' political expression. Moreover, it is not narrowly tailored to serve a compelling state interest. Finally, under the circumstances here, plaintiffs have not met, and cannot meet, the showing required to obtain injunctive relief. Since Baumgartner's creation and operation of Voteauction.com violated no election or criminal law, *see* Def. Mem. D/SJ at sections IA-C, and since the injunction is based solely on the predicate of the likelihood that the proof at trial would demonstrate such violations, it must be dissolved.

**I. The preliminary injunction is an unlawful prior restraint that "chills" protected speech.**

Even plaintiffs here appear to have understood that Baumgartner was not really auctioning off votes. As plaintiff Neal stated to the press:

In Chicago we react strongly and quickly to this type of activity -- *whether it's tongue-in-cheek or not* -- because we need to guard our reputation here that this is a place where voting activity is legal and above board and beyond reproach.

Sherrif, *Votes for sale online in the US*, The Register, October 5, 2000 (emphasis added).

(Complaint, Exh. A at 81.) Nonetheless, plaintiffs proceeded to obtain an ex parte preliminary injunction shutting down Voteauction.com.

Governmental action directed to suppressing speech because of its content before the speech is communicated, such as that which occurred here, constitutes a prior restraint. *U.S. v. Kaum*, 827 F.2d 1144, 1150 (7<sup>th</sup> Cir. 1987), citing *In re G. & A. Books, Inc.*, 770 F.2d 288, 296 (2d Cir. 1985), *cert. denied*, 475 U.S. 1015 (1986). The preliminary injunction entered in this case clearly falls within this definition; “[t]emporary restraining orders and permanent injunctions – i.e., court orders that actually forbid speech activities – are classic examples of prior restraints.” *U.S. v. Raymond*, 228 F.3d 804, 815 (7<sup>th</sup> Cir. 2000), citing *Alexander v. U.S.*, 509 U.S. 544, 550 (1993). Since government suppression of protected speech is not tolerated, even temporarily, under the First Amendment, the Supreme Court has insisted upon even greater protection from prior restraints than from subsequent punishments, *see Alexander*, 509 U.S. at 554, citing *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558-59 (1975), with “heavy presumptions” against their constitutional validity. *Kaum*, 827 F.2d at 1150, citing *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971).

The presumption of invalidity is even stronger in the case of a pretrial injunction that was issued before full evidentiary proceedings and a final determination that the speech lacked constitutional protection. *See Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 66 (1989) (mere probable cause to believe a legal violation has transpired is not adequate to remove books or films from circulation); *Vance v. Universal Amusement Co.*, 445 U.S. 308, 316 (1980) (allegedly obscene speech may not be enjoined pre-trial without a final judicial determination of obscenity). This presumption is grounded in the recognition that the suppression of protected speech, even temporarily, constitutes irreparable injury to First Amendment interests. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Finally, the presumption against invalidity of prior restraints should be strongest where, as here, the case involves Internet speech, “the most participatory form of mass speech yet

developed,” where free speech protections are at their highest. *Reno v. American Civil Liberties Union*, 521 U.S. 844, 863 (1997), citing *ACLU v. Reno*, 929 U.S. 824, 883 (E.D. Pa. 1996) (Dalzell, J. concurring). See Def. Mem. D/SJ at section IB.

In this case, the Preliminary Injunction Order entered by the Circuit Court of Cook County on October 18, 2000, enjoins defendants, and “all those acting in concert with them,” from:

- A. Using or operating any Internet web site that encourages or allows residents of Illinois to sell their votes to be cast at the November 7, 2000 General Election.<sup>2</sup>
- B. Using, operating,, facilitating or accessing domain name “voteauction.com” and to remove such web site from the Internet completely or, in the alternative, to modify the Internet web site known as “voteauction.com” so as to remove any illegal content.
- C. Allowing or continuing registration of the Internet domain name “voteauction.com” or any other domain name offering substantially the same service as voteauction.com.
- D. Using or operating in the State of Illinois any Internet web site by any name in any manner that would violate prohibitions in the laws of the State of Illinois and of the United States against the buying and selling of votes in elections.
- E. Accepting from residents of the State of Illinois any registration or offer to sell votes or to buy votes at auction through voteauction.com and to modify

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<sup>2</sup> As the November 7, 2000 election has now passed, this paragraph has become moot in terms of enjoining future conduct. Nonetheless, the fact that Baumgartner was enjoined between October 18 and November 7 from using or operating Voteauction.com as an Internet web site that “encourages” Illinois residents to “sell” their votes, see Preliminary Injunction Order at 4, albeit not seriously, and only satirically, is pertinent to his counterclaim for damages.

their web site to indicate that all registrations or offers to sell votes and/or buy votes from Illinois residents will be denied.

Preliminary Injunction Order at 4, pars. 1A-E.

As shown above, paragraph 1B of the Order prevents Baumgartner from using or operating Voteauction.com and orders the removal of the web site from the Internet. *Id.* While this paragraph purports, in the alternative, to allow the site to continue if modified “so as to remove any illegal content,” *id.*, in fact the option for modification is meaningless. For this

Court made ex parte findings, based entirely on the papers submitted by the plaintiffs and before defendants could mount any defense, that

the proofs, once submitted, would likely show that defendants ... and those acting in concert with them ... have violated the election laws of the State of Illinois and the United States by using and operating an Internet web site known as ‘voteauction.com’ as an auction forum for the purpose of encouraging, soliciting, and allowing residents of Illinois to sell their votes ... and corporations to ‘bid’ on and buy such votes.

Preliminary Injunction Order at 2, par. 5A. When these findings are read in conjunction with paragraph 1B, there could be virtually nothing left on the site – and certainly not its core, satirical message -- once the “illegal content,” as defined by the Court, was excised. Thus, under the Order, any content on the site that “encouraged” or “solicited” people to buy or sell votes is part of the “illegal content” that must be removed. Yet such content formed the very heart of Baumgartner’s satirical construct of a vote auction.

Paragraph 1B, in conjunction with paragraph 1C, further prevents Baumgartner from putting up a web site with the Internet domain name “voteauction.com” or any domain name “offering substantially the same service.” *Id.* at 4. Thus, under the Order, Baumgartner is not only prohibited from using or operating the Voteauction.com web site, but also is prohibited from putting up a substantially similar web site to voteauction.com under a different name.

Paragraph 1D, which prohibits the use of any Internet web site under any name in any manner that would violate federal and state election laws against buying and selling votes, also must be read in conjunction with the factual findings that form the predicate for the Preliminary Injunction Order. Because the Court found that the proof likely would show that the vote auction construct created by Baumgartner constitutes illegal vote bartering, Baumgartner understands the Order to prohibit him from creating and operating any future web site, under any name, that uses a similar construct.

Finally, paragraph 1E prohibits Baumgartner from accepting any registrations by Illinois voters through Voteauction.com and to expressly indicate that all such registrations will be denied. Although paragraph 1E applies only to registrations through Voteauction.com, and not through other sites, Baumgartner understands this paragraph, in conjunction with paragraph D, to prohibit him from accepting Illinois registrations on any substantially similar web site that he might create in the future. In any event, should Baumgartner revive the name "Voteauction.com," accepting registrations from Illinois clearly would be prohibited under this section. However, the registration process is necessary to effectuate the participatory, interactive component of Voteauction.com as the satirical performance piece that Baumgartner envisioned. *See* Counterclaim at pars. 6,8; Def. Aff. at par. 10. Moreover, prohibiting registrations violates the rights of free speech and assembly of Illinois site visitors, as well as Baumgartner. *See* Def. Mem. D/SJ at section IB.

In short, so long as the Preliminary Injunction Order remains in effect, Baumgartner cannot revive Voteauction.com or even create a new, substantially similar site without risk of contempt proceedings in this action, and the underlying threat of the application of criminal laws to his conduct as well. In light of the real nature of Voteauction.com, the preliminary injunction thoroughly chills his protected political expression and that of his site visitors. Under the First



Amendment, such chill is impermissible. Moreover, the injury to First Amendment interests is particularly grievous, because the injunction was issued ex parte, without any evidence of actual vote buying or vote selling, and prior to the receipt of any evidence from the defense about the real nature of the Web site, Baumgartner's intent, and the understanding and intent of those who registered or visited the site. Finally, the factual predicates supporting the injunction cannot be squared with the evidence -- whether one looks at the Complaint alone or in conjunction with the pleadings and materials Baumgartner has now filed -- demonstrating that Baumgartner's speech was protected parody and satire. *See* Def. Mem. D/SJ. Under these circumstances, the injunction cannot stand.

**II. The injunction was not necessary to serve a compelling state interest, nor was it narrowly tailored.**

The injunction prohibits the communication and receipt of Baumgartner's satiric political speech through the Internet, based on the content of that speech. Such limitations are reviewed under a standard of strict scrutiny; the government must demonstrate that the limitation serves a compelling state interest and that the injunction is narrowly drawn to further that interest. *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115, 126 (1989). Plaintiffs cannot satisfy either prong of this test here.

The interests claimed by plaintiffs -- preventing election fraud and preserving the integrity of the voting process -- are certainly worthy, but not truly at issue in this case. Plaintiffs must assert more than important interests in the abstract; they must show "that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broadcasting System, Inc. v. FCC*, 522 U.S. 622, 664 (1994). Because Voteauction.com was never meant to be used, and in fact could not be used, to match up real buyers and sellers of votes, it never posed any threat to the asserted interests of the public in



a “fair and impartially conducted” or “free and equal” election. Moreover, because Baumgartner’s satiric message was reasonably apparent to site visitors, the site posed no real threat even to the *appearance* of a fraud-free election.

Even if Voteauction.com were found, somehow, to implicate the public’s interest in a fair election, the injunction is not narrowly tailored to protect that interest. *See Sable*, 492 U.S. at 126; *Raymond*, 228 F.3d at 816 (cautioning district courts to narrowly tailor their injunctions to prohibit only those activities that can be restrained consistent with the First Amendment). The injunction did not simply prohibit Baumgartner and his unnamed, alleged co-conspirators merely from buying or selling votes; it broadly prohibited him from “using, operating, facilitating, or accessing” the Internet site “voteauction.com” and ordered him to remove that web site from the Internet completely. Preliminary Injunction Order at 4, par. 1B. The injunction also prohibits him from creating and operating any substantially similar site, using the vote auction construct, in the future. *Id.* at pars. 1C-E. Thus, the injunction completely silenced his communications and chills future communications about serious flaws in our campaign financing system, by way of this creative, effective, and technologically advantageous medium. An overbroad injunction that suppresses more protected speech than is necessary to serve a compelling interest is abhorrent to the First Amendment. *See Reno*, 521 U.S. at 874-75.

### **III. Plaintiffs did not meet the standard to secure preliminary relief.**

Finally, the procurement of a preliminary injunction requires a showing by plaintiffs that they are likely to prevail on the merits and that they will suffer irreparable harm if injunctive relief is not granted. *Limestone Development Corp. v. Village of Lemont*, 284 Ill. App. 3d 848, 853, 672 N.E.2d 763, 767 (1<sup>st</sup> Dist. 1996). *See also ACLU v. Reno*, 929 F. Supp. at 851. In addition, the court must consider whether the potential harm to the defendant outweighs possible harm to the plaintiffs if such relief is denied, *id.*, and whether the granting of injunctive relief is

in the public interest. *ACLU v. Reno*, 929 F. Supp. at 851. Plaintiffs here did not meet this standard at the time they requested the preliminary injunction and cannot meet it now.

First, plaintiffs are unlikely to succeed on the merits. As shown in the Memorandum in Support of Defendant Baumgartner's Combined Motions for, Alternatively, Dismissal, Judgment on the Pleadings, or Summary Judgment, defendants, including James Baumgartner, did not violate any election or criminal law, or cause anyone else to violate any such law, in connection with the operation of Voteauction.com. *See* Def. Mem. D/SJ at sections IA-C. Thus, the very basis of the Complaint is unsubstantiated. Indeed, plaintiffs are entitled to a dismissal of the Complaint or, in the alternative, judgment on the pleadings or summary judgment. *See* Def. Mem. D/SJ.

Second, plaintiffs were not facing irreparable harm at the time they sought the preliminary injunction and will not suffer irreparable harm now – indeed, any harm at all – had Voteauction.com remained on-line prior to the November 2000 election and if Baumgartner is permitted to put Voteauction.com or a substantially similar web site back on the Internet in the future. Because Baumgartner and the web site were not in fact engaging in any illegal vote buying or selling, the site poses no threat either to the authority of the laws of the state or federal government or to the legitimacy of any election.


The remaining factors heavily favor Baumgartner. Because the injunction deprives him and the site users of their First Amendment interests, he (and they) are suffering irreparable harm, as noted above. “[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976), citing *New York Times Co. v. United States*, 403 U.S. 713 (1971). Finally, “no long string of citations is necessary to find that the public interest weights heavily in favor of having access to a free flow of constitutionally protected speech.” *Id.*, citing *Turner Broadcasting System, Inc. v.*

*FCC*, 512 U.S. 622 (1994); *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 763-65 (1976).

### Conclusion

Voteauction.com was satire and parody, not an illegal scheme for vote bartering. The preliminary injunction impermissibly censored Baumgartner's political and artistic expression and chills him from engaging in similar expressive activities in the future. The attempt to suppress such expression should have been evaluated only after all the evidence was in, and by the most stringent standards of review. Neither practice occurred here. This Court should vacate the preliminary injunction and permit Baumgartner to restore Voteauction.com, or a similar site using the vote auction construct, to the Internet.

Respectfully submitted,

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Dated: March 30, 2001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, COUNTY DIVISION

BOARD OF ELECTION COMMISSIONERS OF THE  
CITY OF CHICAGO, LANGDON D. NEAL,  
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Defendants.

No. 00 CE 31

Judge Michael J. Murphy

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COUNTY DIVISION  
DOROTHY BROWN CLERK

**DEFENDANT JAMES BAUMGARTNER'S MOTION  
TO VACATE PRELIMINARY INJUNCTION**

Defendant James Baumgartner, by his attorneys, pursuant to Section 11-108 of the Illinois Code of Civil Procedure (735 ILCS 5/11-108), moves this Court to vacate the preliminary injunction entered on October 18, 2000. In support of this motion, Baumgartner states as follows:

1. This case concerns the Internet web site Voteauction.com, which purportedly solicited and allowed individuals to "sell" and individuals and groups to "bid" on votes to be cast in the November 2000 presidential election. Plaintiffs, the Board of Election Commissioners of the City of Chicago and three individual Commissioners, sought and obtained from this Court a preliminary injunction that prohibits defendants from operating Voteauction.com on the grounds that such operation violated numerous federal and state criminal and election laws. On October 31, 2000 Baumgartner removed the action to the United States District Court for the Northern District of Illinois, but that court, upon plaintiffs' motion, remanded the case back to this Court on February 6, 2001. Baumgartner now asks this Court to vacate the preliminary injunction. In

other combined motions, filed and briefed separately from this motion, Baumgartner has asked this Court, alternatively, to dismiss the complaint, award him judgment on the pleadings, or award summary judgment in his favor on the grounds that Voteauction.com was a lawfully operated work of political and social satire and parody, protected by the First Amendment to the Constitution of the United States. *See* Defendant's Combined Motions for, Alternatively, Dismissal, Judgment on the Pleadings, or Summary Judgment, and memorandum in support thereof (hereafter "Def. Mem. D/SJ").

2. The Preliminary Injunction Order entered on October 18, 2000, enjoins defendants, and "all those acting in concert with them," from:

- A. Using or operating any Internet web site that encourages or allows residents of Illinois to sell their votes to be cast at the November 7, 2000 General Election.
- B. Using, operating,, facilitating or accessing domain name "voteauction.com" and to remove such web site from the Internet completely or, in the alternative, to modify the Internet web site known as "voteauction.com" so as to remove any illegal content.
- C. Allowing or continuing registration of the Internet domain name "voteauction.com" or any other domain name offering substantially the same service as voteauction.com.
- D. Using or operating in the State of Illinois any Internet web site by any name in any manner that would violate prohibitions in the laws of the State of Illinois and of the United States against the buying and selling of votes in elections.

- E. Accepting from residents of the State of Illinois any registration or offer to sell votes or to buy votes at auction through voteauction.com and to modify their web site to indicate that all registrations or offers to sell votes and/or buy votes from Illinois residents will be denied.

Preliminary Injunction Order at 4, pars. 1A-E.

3. Baumgartner, a graduate student at Rensselaer Polytechnic Institute, created Voteauction.com for his master's degree thesis in Electronic Art. Verified Answer and Counterclaim (hereafter "Counterclaim") at par. 6; Baumgartner Affidavit (hereafter "Def. Aff.") at par. 3.<sup>1</sup> In launching Voteauction.com, his chief intention was to comment critically and generate discussion on what he perceived to be a major problem in American government: the ability of corporate interests to buy political candidates. Counterclaim at pars. 6-8; Def. Aff. at pars. 3-6. In compliance with the Preliminary Injunction Order, Voteauction.com immediately was removed from the Internet and Baumgartner ceased to have any access to or control over the site. Counterclaim at par. 23; Def. Aff. at pars. 25-26.

4. Baumgartner desires to have the option to reinstate Voteauction.com or a substantially similar web site to the Internet, to continue to broadcast his disdain for the election process and the commercialization of American democracy through such a vehicle, and to use the "vote auction" construct on an Internet web site to continue to engage his site visitors in discussion and debate about these critically important issues. See Counterclaim at par. 28; Def. Aff. at par. 28. However, as long as the Preliminary Injunction remains in effect, Baumgartner cannot revive Voteauction.com or even create a new, substantially similar site without risk of contempt proceedings in this action.

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<sup>1</sup> The Affidavit of James Baumgartner is attached as Exhibit 1 to his Memorandum in Support of Combined Motions For, Alternatively, Dismissal, Judgment on the Pleadings, or Summary Judgment.

5. The preliminary injunction was wrongfully issued and should be dissolved, for the following reasons:

6. Because Voteauction.com is political and artistic satire and parody protected by the First Amendment, *see* Def. Mem. D/SJ, at sections IA-B, the preliminary injunction chills protected speech and operates as an unconstitutional prior restraint on Baumgartner's expression. *See U.S. v. Raymond*, 228 F.3d 804, 815 (7<sup>th</sup> Cir. 2000).

7. In addition, the injunction was not necessary to serve a compelling state interest, nor was it narrowly tailored. *See Sable Communications of California, Inc. v. FCC*, 492 U.S. 115, 126 (1989). Because Voteauction.com was never meant to be used and in fact could not be used to match up real buyers and sellers of votes, it never posed any threat to the interests asserted by plaintiffs, those of the public in a "fair and impartially conducted" or a "free and equal" election. Moreover, the injunction was not narrowly tailored to serve such interests. It did not simply prohibit Baumgartner from using Voteauction.com to enable the purchase and sale of votes; it broadly prohibited him from "using, operating, facilitating, or accessing" the Internet site "voteauction.com" and ordered him to remove that web site from the Internet completely. Preliminary Injunction Order at 4, par. 1B. The injunction also prohibits him from creating and operating any substantially similar web site, using the vote auction contract, in the future. *Id.* at pars. 1C-E. An injunction that suppresses more protected speech than is necessary to serve a compelling interest is abhorrent to the First Amendment. *Reno v. American Civil Liberties Union*, 521 U.S. 844, 874-75 (1997).

8. Finally, plaintiffs did not meet the standard to secure preliminary injunctive relief. Since Baumgartner's operation of Voteauction.com did not violate any criminal or election law, *see* Def. Mem. D/SJ at section IC, plaintiffs are not likely to succeed on the merits of the




Complaint. (Indeed, defendant is entitled to its dismissal. *See id.*). For the same reasons, plaintiffs will not suffer any harm, let alone irreparable harm, if Voteauction.com is returned to the Internet. In contrast, the issuance of the injunction caused irreparable harm to Baumgartner. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury”), citing *New York Times Co. v. United States*, 403 U.S. 713 (1971). Finally, the public interest weighs heavily in favor of having access to a free flow of constitutionally protected speech. *See id.*

9. Contemporaneously with this motion, Baumgartner has filed a supporting memorandum, in which his arguments are set forth in further detail.

WHEREFORE, defendant James Baumgartner moves this Court to vacate the preliminary injunction of October 18, 2000.

Respectfully submitted,

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Attorneys for Defendant  
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Dated: March 30, 2001

**CERTIFICATE OF SERVICE**

David L. Ter Molen, an attorney, hereby certifies that he caused a true and correct copy of Defendant James Baumgartner's Motion To Vacate Preliminary Injunction, and Memorandum in Support thereof, to be served upon all counsel of record by messenger delivery, as follows:

James M. Scanlon  
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Phillip J. Robertson  
Assistant Attorney General  
Nursing Home Bureau  
State of Illinois  
Office of the Attorney General  
100 West Randolph Street  
Chicago, IL 60601

on this 30th day of March 2001.

  
\_\_\_\_\_  
David L. Ter Molen