

**U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

04 DEC 29 PM 12:01

**CYNTHIA C. LAMBERT,**

**Plaintiff,**

**vs.**

**GREG HARTMANN, in his official  
capacity as CLERK OF COURTS**

**and**

**HAMILTON COUNTY BOARD  
OF COUNTY COMMISSIONERS,  
In their official capacities**

**Defendants.**

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:**CASE NO. 1:04 CV 837**  
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:**JUDGE J. WATSON**  
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**PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER  
AND  
PRELIMINARY INJUNCTION**

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NOW COMES Plaintiff, Cynthia Lambert, pursuant to Federal Rule of Civil Procedure 65 and moves the Court for a temporary restraining order and preliminary injunction requiring Defendants to immediately cease and desist from publishing individual social security numbers on the website [www.courtclerk.org](http://www.courtclerk.org) and from making social security numbers publicly available through any other means. The grounds for this motion are more fully set forth in the complaint and supporting memorandum filed herewith.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF MOTION  
FOR TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

**I. Introduction**

Plaintiff, Cynthia Lambert, respectfully requests that the Court issue a temporary restraining order and preliminary injunction requiring Defendants to immediately cease their practice of publishing and making publicly available without any restriction individual social security numbers on the website [www.courtclerk.org](http://www.courtclerk.org), which is maintained by Defendants at public expense. As a matter of policy and practice, Defendants publish via the internet documents containing the social security numbers and abundant other personal information about individuals who receive traffic and other minor citations in Hamilton County. The availability of this information without restriction is well known to criminals who have repeatedly and purposefully used personal information made readily available by Defendants to commit a variety of serious criminal offenses generally described as identity theft.

Although there may be some reason to collect this information, there is no legitimate governmental interest in *publishing* individual social security numbers on the internet. Indeed, it is well established that such publication violates a clearly established right to individual privacy. *See State ex. Rel. Beacon Journal Publishing Company v. City of Akron*, 640 N.E.2d 164 (1994) (“there is a federal right to privacy which protects against governmental disclosure of the private details of one’s life. . . . Due to the federal legislative scheme involving the use of SSNs, city employees have a legitimate expectation of privacy in their SSNs.”) *citing Nixon v. Admr. Of Gen. Serv.*, 433 U.S. 425 (1977) and 5 U.S.C. § 552a; *see also Smith v. City of Dayton*, 68 F.Supp.2d 911 (S.D.

Ohio 1999) (“in releasing this information [names, addresses, phone numbers, social security numbers, drivers licenses, and similar information], the City violated both Officer Smith’s substantive and procedural due process rights under the Fourteenth Amendment.”) *citing Kallstrom v. City of Columbus*, 136 F.3d 1055 (6<sup>th</sup> Cir. 1998). Accordingly, Plaintiff has demonstrated a substantial likelihood of success on the merits.

Countless individuals stand to become victims of identity theft if the information published by Defendants continues to be made available on the internet without restriction. As a result of such crimes, individual credit is often irreparably damaged. As a result, the plaintiff class stands to suffer irreparable harm if the publication continues. Moreover, the public interest in deterring and preventing crime also supports granting the requested relief. There is no legitimate governmental reason to continue indiscriminately publishing social security numbers on the internet. In sum, the requested relief should be granted, and, as there is no risk of harm to anyone from granting the requested relief, no bond should be required.

## **II. Facts**

### **A. Defendants Have A Policy and Practice of Publishing Private Personal Information, Including Social Security Numbers, On the Internet.**

The Hamilton County Clerk of Courts has maintained a publicly accessible website with the address [www.courtclerk.org](http://www.courtclerk.org) since approximately 1998. The main page of the web site indicates that it contains documents relating to all manner of proceedings, including, among others, common pleas civil and criminal matters, municipal civil and criminal matters, and municipal traffic matters. (Ex. A). The website is configured such

that its content can be searched by individual name, case numbers, attorneys' names, judges' names, and by various other fields. (Ex.B).

Among the documents routinely scanned onto the Defendants' website are traffic tickets. In less than ten minutes, Plaintiffs' counsel was able to obtain copies of several traffic tickets and a dog warden citation relating to several different local residents, each of which contained the individual's name, address, date of birth, signature, and, most significantly, social security number. (See Complaint). According to defendants' website, the Hamilton County Clerk of Courts processes over 50,000 traffic tickets annually. (Ex. C). Thus, a potentially large group of people have been affected by defendants' policy of publishing documents containing social security numbers such as traffic citations. Significantly, defendants' website does not include any password protection, such as that utilized by the federal system "PACER", or other safeguard to ensure that only authorized individuals access the personal and confidential information published by Defendants. Thus, plaintiffs' private information has been published and made publicly available without any restriction by Defendants.

**B. Plaintiff Cynthia Lambert Was Victimized With Information Obtained From Defendants' Website.**

In September 2003 Plaintiff, Cynthia Lambert, received a citation in connection with a traffic accident in Hamilton County. (Complaint Ex. 1).<sup>1</sup> The Defendants subsequently scanned the citation and published it via the internet. (Complaint Ex. 1). Ms. Lambert's citation, which included her home address, physical description,

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<sup>1</sup> All such documents have been redacted of confidential information for filing in this action consistent with the policy of the clerk of the district court under which documents containing social security numbers are regularly returned to filing counsel for redaction or filing under seal.

telephone number, driver's license number, signature and social security number, was available to the public via the internet without any restriction.

On August 18, 2004, it is believed that Tracy Southerland used Ms. Lambert's social security number and other information obtained from Defendants' website to pass herself off as Ms. Lambert. Ms. Southerland increased Ms. Lambert's credit limit at Sam's Club and charged in excess of \$8,000.00 worth of electronics to Ms. Lambert's account. Subsequently, Ms. Southerland engaged in similar activity at Home Depot where Ms. Lambert also had an account.

Ms. Southerland has apparently been apprehended and indicted for her crimes against Ms. Lambert and is awaiting trial. (Ex. D). The possibility that Ms. Southerland had gotten Ms. Lambert's personal information, including her social security number, from Defendants' website was first suggested to Ms. Lambert by a "loss prevention" employee of Sam's Club, Mr. Jeff Hatridge, who informed Ms. Lambert that it was well known that criminals were obtaining the information necessary to commit identity fraud from the Hamilton County Clerk of Court's website. Ms. Lambert's suspicion that Ms. Southerland had obtained her personal information from Defendants' website deepened when she learned that the driver's license number used by Ms. Southerland was off by one digit in the same manner as the ticket published on the internet by Defendants. (See Complaint).

In early September 2004, Ms. Lambert contacted the Hamilton County Clerk of Courts office to express her concern about the dissemination of her and others' personal and confidential information on defendants' website. (See Complaint). Eventually, Ms. Lambert spoke with a Mr. Jerry Polland, whom she understood to be a relatively high

ranking member of the office's staff. Rather than investigate Ms. Lambert's concerns or otherwise indicate an intent to take them seriously, Mr. Polland insisted that there was no way to prove that the information used by Ms. Southerland was obtained from defendants' website. (See Complaint). Mr. Polland further advised Ms. Lambert, incorrectly, that the clerk was required to make information such as her social security number available to the public. (Id.).

Ms. Lambert recently learned that Ms. Southerland's apparent accomplice was arrested by the Blue Ash, Ohio police within the last ten days. According to a Blue Ash police officer has advised Ms. Lambert that Ms. Southerland's accomplice has confessed that the defendants' website has been the source of Ms. Lambert's and many others' personal information utilized by a far-reaching identity theft ring. (See Complaint) Subsequently, Ms. Lambert spoke with another member of the clerk of court's office, Mr. Dale Schwier, who advised Ms. Lambert that representatives of the office met with representatives of the FBI, postal inspectors, members of the Hamilton County Prosecutor's office and others, regarding identity theft issues on or about December 17, 2004. Despite the fact that meeting has evidently been held and the Defendants are aware of the harmful consequences of their unlawful publication of personal information, the website has remained in place up to the time of filing.

### **III. Discussion**

- A. A Temporary Restraining Order and Preliminary Injunction Should Issue Because It Is Clear That Plaintiff Is Likely To Prevail On The Merits, Because Plaintiff And Many Others Will Suffer Irreparable Harm If The Unlawful Publication Of Social Security Numbers Continues, And Because The Public Interest Is Served By Preventing Additional Identity Thefts.**

Preliminary injunctive relief such as that sought in this case is appropriate under Rule 65 where: 1) there is a likelihood of plaintiff's success on the merits; 2) the plaintiff will suffer irreparable harm without the injunction; 3) others will not suffer harm if the injunction is granted; and, 4) the injunction would serve the public interest. *See In re DeLorean*, 755 F.2d 1223, 1228 (6<sup>th</sup> Cir. 1985). "[T]he four considerations applicable to preliminary injunctions are factors to be balanced and not prerequisites that must be satisfied. These factors simply guide the discretion of the court; they are not meant to be rigid and unbending requirements." *In re Eagle-Picher Industries, Inc.*, 963 F.2d 855 (6<sup>th</sup> Cir. 1992) (citations omitted). Each of these requirements is clearly satisfied on the facts of this case.

#### **1. Likelihood of Success on the Merits**

42 U.S.C. § 1983 provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

To make out a proper claim under § 1983, a plaintiff must show that 1) the action occurred under color of state law, and 2) the action resulted in a deprivation of a constitutional right or a federal statutory right. *See Parratt v. Taylor*, 451 U.S. 527, 535 (1981). The conduct complained of herein was committed by and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio, and the clerk of the court of common pleas for Hamilton County, Ohio elected pursuant to O.R.C. § 2303.01, both of

whom clearly acted under color of state law by using public funds to create their website and publicly disseminate the personal information of plaintiff and others.

It is well established that citizens of the United States enjoy a fundamental, federal, constitutional, right to personal privacy that may not be trammled without a sufficiently compelling public interest. *See Griswold v. Connecticut*, 381 U.S. 479 (1965). This right of privacy clearly extends to individual social security numbers in today's information driven economy where a social security number coupled with other personal information can afford access to and, as this case demonstrates, control over, virtually every facet of one's financial life:

With respect to Social Security numbers, we found a strong privacy interest: 'the extensive use of Social Security numbers as universal identifiers in both the public and private sectors is one of the most serious manifestations of privacy concerns in the nation.' We failed to discover any countervailing public interest justifying their release.

*Sheet Metal Workers Int'l Ass'n v. U.S. Dept. of Veterans Affairs*, 135 F.3d 891, 898 (3d Cir. 1998), *citing IBEW v. U.S. Dept. of Housing and Urban Dev.*, 852 F.2d 87, 89 (3d Cir. 1988).

The Ohio Supreme Court likewise recognized that there is the federal constitutional right to privacy extends to social security numbers, which are, of course, created and assigned by an agency of the federal government. *See State ex. Rel. Beacon Journal Publishing Company v. City of Akron*, 640 N.E.2d 164 (1994). Considering a newspaper's challenge to a city's refusal to disclose employee social security numbers under Ohio's Public Records Act (O.R.C. § 149.43), the Ohio Supreme Court found a clear manifestation of this important federal right:

Due to the federal legislative scheme involving the use of SSNs, city employees have a legitimate expectation of privacy in their SSNs. . . . The purpose of the Privacy Act of 1974 was ‘to curtail the expanding use of social security numbers by federal *and local agencies* and, by so doing, to eliminate the threat to individual privacy and confidentiality of information posed by common numerical identifiers.’ Congress when enacting the Privacy Act of 1974 was codifying the societal perception that SSNs should not be available to all. This legislative scheme is sufficient to create an expectation of privacy in the minds of city employees concerning the use and disclosure of their SSNs.

*Id.*, at 167-68 (emphasis added) *citing Doyle v. Wilson*, 529 F.Supp. 1343, 1348 (Del. 1982).

Ohio’s highest court specifically recognized that “an intruder using an SSN can quietly discover the intimate details of a victim’s personal life without the victim ever knowing of the intrusion” and held that, under the circumstances presented, the Constitution forbade the disclosure of social security numbers as an impermissible invasion of privacy. *Id.*, at 169.

The posting of documents containing social security numbers is part of an official policy and practice of the defendants. Thus, defendants may be properly held responsible for the harm caused by the invasion of plaintiff’s privacy. *See Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690 (1978). The essential elements of plaintiff’s claim are clearly present – her federal constitutional right to privacy was violated under color of state law pursuant to an official policy of defendants. Accordingly, plaintiff has demonstrated a substantial likelihood of success on the merits.

## **2. Irreparable Harm**

As noted by the Ohio Supreme Court in *Beacon Journal Publishing v. Akron*, much of the harm occasioned by defendants’ website probably goes undetected for months or even years. Victims of identity theft are sometimes left to settle the hefty bills

run up by their alter egos or fight lengthy legal battles with creditors. Moreover, the impact upon a victim's credit status can be permanent and is virtually irremediable.<sup>2</sup> Plaintiff has been able to resolve each of the accounts run up in her name by Ms. Southerland. However, she and her husband are left with a credit report that will long be plagued by notations of "fraud" and explanatory comments which will raise unnecessary questions, cause delays, embarrassment and aggravation every time the couple seeks financing. Thus, plaintiff and the class she seeks to represent stand to be irreparably harmed if the publication of their social security numbers is not stopped.

### **3. Public Interest**

The public interest is obviously served by preventing identity theft. An injunction stopping defendants' publication of social security numbers will also serve the public's interest by limiting the damages that the defendants are responsible to pay to plaintiff and the class she represents.

#### **B. No Bond Should Be Required Because The Requested Relief Does Not Pose A Threat Of Harm To Defendants Or Anyone Else.**

The court may decline to require any bond when issuing a temporary restraining order or preliminary injunction. This is especially true where there is no realistic likelihood of harm to defendant from enjoining his or her conduct. *See Jorgensen v. Cassidy*, 320 F.3d 906 (9<sup>th</sup> Cir. 2003). No appreciable purpose is served by publishing individuals' social security numbers on the internet. Indeed, nothing in the Ohio revised code requires or even permits the defendants to operate such a website. Moreover, a review of defendants' website indicates that it does not generate any revenue for

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<sup>2</sup> See Exhibits E and F describing costs associated with identity theft.

defendants. Accordingly, no harm will be done to anyone by shutting down the web site until such time as defendants can remove all such documents containing social security numbers from their website or redact such numbers therefrom so that defendants do not continue to aid identity thieves. If defendants believe that there is a significant public purpose, they can redact social security numbers from all such documents before posting them to the internet in the future. However, for the present time, no harm will befall anyone except those who use defendants' website as part of a criminal endeavor. Accordingly, no bond should be required.

**C. The Court May And Should Grant Injunctive Relief With Respect To The Entire Proposed Class.**

Although no class has yet been certified pursuant to Rule 23, under the circumstances the Court is empowered to treat this case as a class action for purposes of fashioning injunctive relief and consider the irreparable harm faced by putative class members. *See Helwig v. Kelsey-Hayes Co.*, 857 F.Supp. 1168, 1180 (E.D.Mich. 1994), *citing Lapeer County Medical Care Facility v. Michigan*, 765 F.Supp. 1291, 1301 (W.D.Mich. 1991) (prior to certification, court treated case as class action); *Musto v. American General Corp.*, 615 F.Supp. 1483, 1492 (W.D. Tenn. 1985) (preliminary injunction may issue prior to certification), *rev'd on other grounds*, 861 F.2d 897 (6<sup>th</sup> Cir. 1988), *cert. denied*, 490 U.S. 1020 (1989). Because injunctive relief is so clearly appropriate and in the public interest under the circumstances, the Court should exercise this authority and fashion preliminary injunctive relief in favor of the entire proposed class.

#### **IV. Conclusion**

Unfortunately, a large amount of personal information has already been provided to potential criminals by the defendants. However, no one else should have to go through what plaintiff has experienced. Thus, the Court should grant plaintiff the requested temporary restraining order and preliminary injunction and direct defendants to immediately cease the publication of documents containing individuals' social security numbers, and until such time as such documents can be individually removed from defendants' website, the entire website should be shut down.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing was faxed to the Hamilton County Prosecutor's Office on December 20, 2004 at approximately 11:15 a.m. and hand delivered following filing.



MARC D. MEZIBOV (Ohio Bar No. 0019316)