

STATE OF INDIANA

IN THE JACKSON SUPERIOR COURT 1

COUNTY OF JACKSON, SS:

CAUSE NO. 36D01 2509 CT 29

BRETT M. HAYS,  
Plaintiff

vs.

ANTHONY COUCH,  
Defendant

**ORDER DENYING TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

This matter comes before the Court for hearing on October 10, 2025. Plaintiff, Brett M. Hays, appears in person and by counsel W. Brent Gill. Defendant, Anthony Couch, appears in person.

Argument held. The Court now issues the following order:

1. The Plaintiff, Brett M. Hays, hereinafter "Hays", has filed a Complaint for Defamation (Libel) and for a Temporary Restraining Order and Preliminary Injunction against Defendant, Anthony Couch, hereinafter "Couch". The Complaint alleges Couch operated the Seymour Immigration Facebook page. The complaint alleges Couch posted false and defamatory material on the Seymour Immigration Facebook page relating to Hays. Attached to Hays' complaint is Exhibit 1, a Seymour Immigration post, which states:

"NO WONDER MR HAYS HATES THIS PAGE AND HOW IT INFORMS THE PUBLIC ON ILLEGAL IMMIGRATION..... HE IS MAKING A KILLING ON REPRESENTING ILLEGAL IMMIGRANT CRIMES.... THE LIST GOES ON AND ON ...."

"No wonder.....Notice most if not all are listed as WYTE....this is how they keep the immigrant crime numbers down....."

2. Hays contends in paragraph 8 of his complaint the statements published by Seymour Immigration are false, malicious, and defamatory, and were intended to harm his professional reputation as a licensed attorney in Jackson County. In paragraph 9 of his complaint Hays alleges Defendant's publications falsely portray Plaintiff in a manner calculated to damage Plaintiff's reputation within the community, including among Plaintiff's current and potential clients.
3. Hays seeks a Temporary Restraining Order and Preliminary Injunction against Couch "restraining Defendant and all persons acting in concert with him from publishing or disseminating any further defamatory statements against him and requiring Defendant to remove from the 'Seymour Immigration' Facebook page all existing defamatory statements concerning Plaintiff, including but not limited to the publication attached as Exhibit 1 to the complaint". Hays also seeks monetary damages.

4. A defamatory communication is one that intends to harm a person's reputation by lowering the person in the community's estimation or deterring third persons from dealing or associating with the person. Rambo v. Cohen, 587 N.E.2d 140, 145 (Ind. App.1992). The framers of the Indiana Constitution placed a high value on reputation. The Indiana Constitution provides, "All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law". Ind. Const. Art.1 Sec.12. A defamatory communication can be either defamatory per se or defamatory per quod. Rambo at 146. A communication is defamatory per se if it imputes:

- A. Criminal conduct
- B. Loathsome disease
- C. Misconduct in a person's trade or profession, office or occupation
- D. Sexual misconduct

Kelley v. Tanoos, 865 N.E.2d 593, 596-97 (Ind. 2007)

To maintain an action for defamation per se or per quod a plaintiff must show:

- A. A communication with defamatory imputation;
- B. Malice;
- C. Publication;
- D. Damages.

Schrader v. Eli Lilly Co., 639 N.E.2d 258, 261 (Ind. 1994). For action for defamation per se, damages are presumed as a natural and probable consequence of the per se defamation. Rambo, 587 N.E.2d at 145 (citing Roach 409 N.E.2d 661, 663 (Ind. App.1980)). For defamation per quod, special damages must be proven to the trier of fact. Rambo at 146.

5. Do Couch's statements constitute defamation per se and justify the granting of a Temporary Restraining Order and Preliminary Injunction? Defendant, Couch's (Seymour Immigration) first statement relating to Hays is "HE IS MAKING A KILLING REPRESENTING ILLEGAL IMMIGRANT CRIMES". This statement does not impute criminal conduct, a loathsome disease or sexual misconduct by Hays. Does the statement allege misconduct in Hays' profession as an attorney? The statement does not allege Hays committed any act that was a Federal or State crime. The statement does not allege that Hays committed any act of deceit as an attorney. Further the statement does not allege that Hays committed any act of incompetence as an attorney. The statement does not attack Hays' character as an attorney. The statement "Mr. Hays is making a killing representing illegal immigrant crimes" is at worst hyperbole or a snide comment. It is not defamatory per se. The first statement does not allege defamation per se to justify the granting of a Temporary Restraining Order or Preliminary Injunction.
6. All statements that are not defamatory per se must be defamatory per quod to be actionable. No reasonable construction of the first statement by Couch as to Mr. Hays that "HE IS MAKING A KILLING REPRESENTING ILLEGAL IMMIGRANT CRIMES" constitutes a defamatory statement which would justify the granting of a Temporary Restraining Order or Preliminary Injunction. The statement alleges that Hays is busy representing illegal immigrants. The Court cannot find a defamatory character to this statement. The Court cannot find grounds for the granting of a Temporary Restraining Order or Preliminary Injunction on the basis of this statement for being defamatory per quod.



7. The second statement by Couch which Hays alleges is defamatory is

"No Wonder ....Notice most if not all are listed as WYTE... this is how they keep immigrant crime numbers down..."

This statement does not refer to Hays specifically by name or by reference. Further it does not refer to him acting in concert with anyone else. The second statement refers to a "they". The "they" cannot be seen as referring to Hays. The second statement seems most reasonably to refer to the whole legal system. The statement is not defamatory to Hays. It further does not justify granting of a Temporary Restraining Order or Preliminary Injunction against Couch.

8. Couch has filed a Motion to Dismiss under Indiana Code 34-7-7-1. Couch alleges in his Motion to Dismiss that any statements he made are in furtherance of his Right to Free Speech under the Constitution of the United States in Connection with a Public Issue. Couch in his Motion to Dismiss has Invoked the Rights to Protection of Free Speech under the United States Constitution and under Indiana Code Section 34-7-7-1-8.
9. The First Amendment of the United States Constitution provides "Congress shall make no law abridging the freedom of speech". Under the free speech clause of the United States Constitution, a government "has no power to restrict expression because of its message, its ideas, its subject matter, or its content. Easterday v. Everhart, 201 N.E.3d 264, 272 (Ind. App. 2023) citing Police Department of Chicago v. Mosley, 408 U.S. 92, 95 (1972). The first amendment applies to the states via the Fourteenth Amendment to the United States Constitution. Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). A chief purpose of the First Amendment is to prevent previous restraints on publication of speech. Near v. Minnesota, 283 U.S. 697, 713 (1931). The Indiana Court of Appeals in Barlow v. Sipes stated "the special vice of a prior restraint is that communication is suppressed, either directly or by inducing excessive caution in the speaker, before an adequate determination that it is unprotected by the First Amendment". Barlow v. Sipes, 744 N.E.2d 1, 9 (Ind. Ct. App. 2001), trans. denied.
10. The protections of the First Amendment are not triggered unless there is state action. Barlow at 10. A Temporary Restraining Order or Preliminary Injunction which restrains speech is state action and triggers the State action element of a free speech analysis. The Temporary Restraining Order and Preliminary Injunction sought in this case seek prior restraint of Couch's speech. Hays seeks a Temporary Restraining Order and Injunctive Relief barring Couch from publishing further defamatory statements and requiring Couch to remove existing alleged defamatory statements which are alleged to be posted on the Seymour Immigration Facebook page. Both actions sought by Hays seek prior restraint of Couch's speech. A prior restraint of speech is not per se a violation under the First Amendment, but it comes before the court facing a heavy presumption that it is constitutionally invalid. In re the Paternity of G.R.G., 829 N.E.2d 114, 124 (Ind. App. 2005). The United States Supreme Court has repeatedly held prior censorship of expression can be justified only by the most compelling governmental interest. Israel v. Israel, 189 N.E.3d 170, 180 (Ind. App. 2022). The First Amendment of the

United States Constitution provides greatest protection to matters of public interest. Garrison v. State of Louisiana, 379 U.S 64, 74 (1964). The issues of illegal immigration raised by Couch's Facebook posts are clearly matters of public concern and entitled to strong First Amendment protection. The fact that Couch's posts relate to matter of public interest weighs heavily against restricting Couch's speech and his exercising of his First Amendment rights.

11. Both actions sought by Hays barring the publishing of further defamatory statements and seeking removal of Couch's existing post seek the prior restraint of Couch's First Amendment right to freedom of expression under the United States Constitution. Hays has not shown this censorship is justified by any compelling state interest that would defeat Couch's right to free speech under the First Amendment.
12. Hays further alleges that he has suffered irreparable injury and has no adequate remedy at law. The Court cannot find this single Facebook statement will cause Hays irreparable injury. As previously noted, the statement on the Seymour Immigration website does not accuse Hays of a state or federal crime or of any actions of moral turpitude. Additionally, Hays claims to have no adequate remedy at law. This is clearly not the case. Hays has filed a Complaint for damages and any defamatory statements made by Couch can subject Couch to an award of damages in favor of Hays. Lastly, Hays has not shown likely success at trial to justify the issuance of a Temporary Restraining Order or Preliminary Injunction.
13. The Court orders that Hays' Motion for Temporary Restraining Order and Preliminary Injunction are both denied.

So Ordered this 27<sup>th</sup> day of October, 2025.



Bruce A. MacTavish, Special Judge  
Jackson Superior Court 1

Copies to:  
W. Brent Gill, Counsel for Brett M. Hays  
Anthony Couch