

Galvin v. Ill. Republican Party
No. 1:14-cv-00490 (N.D. Ill. Sept. 9, 2015)

Year	2015
Court	United States District Court for the Northern District of Illinois
Key Facts	<p>Plaintiff Galvin, a professional photographer, owns the copyright in a photograph he took of plaintiff Meister. The photograph shows Meister participating in a political parade and driving in a convertible decorated with a poster promoting the reelection of Democratic Illinois politician Sam Yingling. Galvin authorized Yingling to post the photograph of Meister on his campaign website.</p> <p>Defendants Illinois Republican Party and other related organizations made unauthorized copies of Galvin’s photograph, altered the photograph so that it appeared as though Meister (who defendants mistook for Yingling) was driving away from the Illinois State Capitol with stolen money, included the altered photo in a flyer critical of Yingling’s performance as a member of the Illinois House of Representatives, and mailed several thousand copies of the flyer to potential voters. Plaintiffs filed suit, claiming defendants’ flyers infringed the copyright in the original photograph. Defendants moved to dismiss the claim, maintaining that their use of the photograph was permissible under the fair use doctrine.</p>
Issue	Whether defendants’ unauthorized reproduction of an altered version of copyright protected photograph in political flyers constitutes fair use.
Holding	<p>The United States District Court for the Northern District of Illinois found defendant’s reproduction of the photograph in its political flyer to be fair use. The court concluded that the first fair use factor, the purpose and character of the use, was not dispositive. Specifically, it noted that the critical and political nature of defendants’ flyer did not in and of itself override the copyright protection accorded to the photograph and that defendants had alternative means of conveying their political message that did not require use of the photograph. But the court weighed the second factor, the nature of the work, in favor of defendants, finding the photograph to be “primarily factual in nature,” as it was a “candid image” and plaintiff “obviously did not stage the action depicted in it.” The court found that the third factor, the amount and substantiality of the work used, favored plaintiffs. It highlighted the “qualitative similarities” between the photograph and the version of the photograph in defendants’ flyer and again noted that the defendants had alternative means of expressing their political criticism. Regarding the fourth factor, the court found that defendants’ use of the photograph was unlikely to impact the potential market for the photograph. In response to plaintiffs’ assertion that defendants’ use would harm the reputation of the photograph’s subject, the court stated that protection from “[p]otential market harm due to [a] blemished reputation” is “simply not a purpose of copyright law.”</p>
Tags	Seventh Circuit; Parody/Satire; Photograph; Review/Commentary
Outcome	Fair use found