

Jury Awards \$8.2 Million to Candidate Defamed by Super PAC's Ad

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Last month, a federal jury awarded former U.S. Senate candidate Roy Moore \$8.2 million in damages after finding that a Democratic super PAC defamed him during a 2017 special election in Alabama. The jury's conclusion is significant, not only because of the size of the verdict but also because of the legal theory underlying its finding.

Following the resignation of then-Senator Jeff Sessions to serve as President Donald Trump's Attorney General, Alabama officials scheduled a special general election to replace Sessions on December 12, 2017. Democrats nominated Doug Jones, a former U.S. Attorney, while the Republicans nominated Alabama Supreme Court Justice Roy Moore following an intense primary battle.

As the general election approached, *The Washington Post* ran a story on November 9, 2017, discussing several women who alleged that Moore had sought out relationships with them while they were teenagers. In relevant part, the article stated: "Wendy Miller says she was 14 and working as a Santa's helper at the Gadsden Mall when Moore first approached her, and 16 when he asked her on dates, which her mother forbade." A few days later, the *New American Journal* published an article alleging that "[s]ources tell me Moore was actually banned from the Gadsden Mall and the YMCA for his inappropriate behavior of soliciting sex from young girls." And finally, AL.com published a story on November 13, 2017, stating that "Wendy Miller told The Post that she was 14 and working as Santa's helper at the Gadsden Mall in 1977 when Moore first spoke with her and told her she looked pretty. Two years later, when she was 16, he asked her out on dates, although her mother wouldn't let her go."

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A Democratically-aligned super PAC – Senate Majority Project (SMP) – took an interest in these allegations and helped turn them into a television advertisement critical of Moore. As recounted by the district court, the ad juxtaposed the following two quotes/citations:

- “Moore was actually banned from the Gadsden Mall ... for soliciting sex from young girls.” – New American Journal, 11/12/2017
- “One he approached ‘was 14 and working as Santa’s helper.’” – AL.com, 11/13/2017

Two years after Moore lost the election, he sued SMP and several other entities/individuals in federal court, alleging that he was defamed (among other legal theories). As pertinent here, Moore argued that the juxtaposition of the two quotes above made it seem as if Miller was one of the girls from whom Moore allegedly solicited sex. SMP countered that the two quotes were each factually accurate and that there was no intent to suggest that Moore was, at the time, explicitly soliciting sex from Miller. SMP also argued that, regardless of its intent, the gist of the charge was true – i.e., that “Moore was well known in Gadsden for trying to pick up teenage girls at the mall, and for attempting to have a sexual relationship with teenage girls.” SMP also raised other arguments, including that it believed Moore was soliciting sex by telling Miller that she looked pretty.

In a pre-trial ruling, Judge Corey Maze found that all of these issues were ultimately questions of fact to be decided by a jury rather than arguments that should be decided as a matter of law. As a result, the case went to trial. And there, the jury sided with Moore, concluding (per the verdict form) that SMP made a false, defamatory statement about Moore that also placed him in a false light in the public eye. As a consequence of these findings, the jury awarded Moore \$8.2 million in damages. SMP argues that these conclusions were in error and plans to appeal.

Regardless of what happens on appeal, this case is an important reminder to super PACs to carefully scrutinize all claims in their advertisements – particularly those that discuss a candidate’s personal life and attributes. The district court’s pre-trial ruling also underscores that there can be a legal risk to super PACs – even where an ad quotes news sources verbatim – because of their on-screen ordering and arrangement. This latter aspect, in particular, is receiving additional attention in the regulated community-at-large since many ad makers have assumed that accurately quoting various news sources immunized them from liability under state defamation laws.

Wiley is available to assist super PACs with all aspects of the political advertisement review process.