

PRESS RELEASE

Wiley Rein Secures Litigation Win in Copyright Case Involving Fair Use in Political Ads

February 27, 2019

Press Contact

Patricia O'Connell
T: 202.719.4532
poconnell@wiley.law

Washington, DC — On Friday, February 22, Wiley Rein LLP secured a win for the Republican National Committee (RNC) in a copyright litigation case that confirmed the national political party committee's ability to use photographs in certain political advertising. In *Peterman v. Republican National Committee*, Chief Judge Dana L. Christensen of the U.S. District Court for the District of Montana, Missoula Division, granted the RNC's motion for summary judgment on fair use grounds.

The Wiley Rein team was led by partners from the Intellectual Property, Litigation, and Election Law & Government Ethics practices: David E. Weslow, Ari Meltzer, Richard W. Smith, co-chair of the Litigation Practice, and Michael E. Toner, chair of the Election Law Practice.

The plaintiff in the case is a photographer who was commissioned by the Montana Democratic Party in 2017 to take photos of a Democratic candidate at a campaign event. After the photographer allowed one of her photos to be posted on the candidate's social media site, a direct-mail vendor retained by the RNC captured, altered, and used it in a political mailing designed to dissuade Montanans from voting for the candidate. The photo did not contain any copyright indicia on its face, and the plaintiff registered it for copyright protection only after she learned that it had been used.

Related Professionals

Ari Meltzer
Partner
202.719.7467
ameltzer@wiley.law
Michael E. Toner
Partner
202.719.7545
mtoner@wiley.law
David E. Weslow
Partner
202.719.7525
dweslow@wiley.law

Practice Areas

Election Law & Government Ethics
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Litigation

The arguments in the case related to four factors described in the copyright fair use statute: (1) the purpose and character of the use, including principles of transformation and commerciality; (2) the nature of the copyrighted work; (3) the amount of the copyrighted work used; and (4) the effect on the market.

Weighing each of the statutory factors, the court determined that “the undisputed facts establish that the RNC is entitled to judgment as a matter of law.” The court said the “RNC’s use was moderately transformative and wholly noncommercial, and it performed a different market function than did the original.”

To read the decision, please [click here](#).