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Voting Rights Groups Beat Election Deniers' Defamation Claim

By **Katie Buehler**

Law360 (January 24, 2023, 6:57 PM EST) -- A Colorado federal judge has axed a counterclaim filed by members of an election integrity activist group that accused the state's League of Women Voters chapter and others of fabricating claims to support their bid for an order preventing election deniers, who were sometimes armed, from approaching Coloradans at home to question them about their voting habits.

U.S. District Judge Charlotte N. Sweeney dismissed defamation and abuse of process counterclaims lodged by three members of the U.S. Election Integrity Plan, or USEIP, a private activist group that vows on its website to find out and share the truth about America's election systems.

The counterclaims grew out of a lawsuit filed in March by civil- and voting-rights groups the Colorado Montana Wyoming State Area Conference of the NAACP, the League of Women Voters of Colorado and Mi Familia Vota. According to the lawsuit, USEIP and its members violated the Voting Rights Act of 1965 and the Ku Klux Klan Act by intimidating or attempting to intimidate voters in the state.

In a **six-page order** issued Monday, Judge Sweeney found the individuals had failed to meet Colorado's requirements for a defamation claim and that their claim was foreclosed under the state's common law because it was based on statements made during the course of litigation, which are immune from liability.

"Here, there is no dispute that the allegedly defamatory statements on which defendants' counterclaim is based were made in plaintiff's complaint," the judge wrote. "Therefore, in accordance with Colorado common law, even if such statements were defamatory, they are protected by this absolute privilege."

The abuse of process claim, which accused the civil- and voting-rights groups of requesting improper relief, also failed, Judge Sweeney ruled. The individuals' criticisms and complaints about the requested relief should have been brought up and argued in a motion to dismiss, but no such motion was ever filed, according to Monday's opinion.

The civil- and voting-rights groups claim USEIP members, including Shawn Smith, Ashley Epp and Holly Kasun, went door-to-door to question voters about their participation in the 2020 election and their voting history in general. In some cases, USEIP members allegedly accused residents of casting fraudulent ballots in the 2020 presidential election, which election deniers still maintain was stolen from former President Donald Trump.

According to the lawsuit, USEIP members use publicly-available voter registration information to show up at individuals' homes and were sometimes armed themselves or accompanied by armed individuals.

The members would often wear badges or introduce themselves in ways that could trick voters into thinking they were associated with government agencies, the civil- and voting-rights groups claim. They would also take pictures of voters' houses and compile them in a database.

"Defendants' objectives are clear," the lawsuit states. "By planning to, threatening to, and actually deploying armed agents to knock on doors throughout the state of Colorado, USEIP is engaging in voter intimidation."

USEIP aimed to intimidate voters who participated in the 2020 election, according to the lawsuit, as well as future eligible voters from participating in the upcoming 2022 election.

The civil- and voting-rights groups claimed USEIP's intimidation was backed up by its members' participation in the Jan. 6, 2021, insurrection at the U.S. Capitol and its ties to conspiracy group QAnon.

Smith, Epp and Kasun countersued in May, arguing there was no basis for the "numerous unsubstantiated and frivolous allegations" lodged against them and USEIP. The individuals accused the civil- and voting-rights activist groups of blindly relying on reporting by The Colorado Times Recorder without independently investigating the claims before filing suit.

The members also claimed the relief requested would eliminate their and USEIP's ability to engage in the electoral process freely, according to court filings.

Courtney Hostetler of Free Speech For People, one of the attorneys representing the civil- and voting-rights groups, told Law360 on Tuesday her clients were "very pleased" with the dismissal of the counterclaims and glad they would no longer be hanging over their heads.

But, she added, there is still work to be done. The groups are currently fighting USEIP's summary judgment bid and hope to secure a resolution that protects voters from the fear of being intimidated in their own homes.

While USEIP has stated its members have stopped visiting voters door-to-door during the lawsuit, Hostetler said her clients are worried about what will happen in the aftermath of future elections.

"Voters should be able to vote safely and without fear that their exercise of their right to vote will bring extremists to their homes," Hostetler said.

Counsel for USEIP and its members did not immediately respond to requests for comment.

The civil- and voting-rights groups are represented by Ben Clements, Courtney Marie Hostetler, John C. Bonifaz and Ronald Andrew Fein of Free Speech For People and Brian Andrew Dillon, Casey Carlton Breese, Dion Richard Farganis, Jean Paul Bradshaw II, Kristin M. Stock, Reid Kelly Day and Amy Elizabeth Erickson of Lathrop GPM LLP.

USEIP and affiliated individuals are represented by Jessica Lynn Hays and R. Scott Reisch of Reisch Law Firm LLC.

The case is Colorado Montana Wyoming State Area Conference of the NAACP et al. v. United States Election Integrity Plan et al., case number 1:22-cv-00581, in the U.S. District Court for the District of Colorado.

--Editing by Vaqas Asghar.