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Trump Campaign Admits Defeat (In Wisconsin Defamation Case Against Local Broadcaster)

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A week after President Trump lost re-election, his campaign committee abruptly dropped its Wisconsin defamation lawsuit over a super PAC's political advertisement criticizing the President's handling of the COVID pandemic. The campaign stipulated to dismissal on November 13, 2020, shortly after one of its targets, a small Wisconsin broadcaster that ran the ad, filed a supplemental motion to dismiss arguing that Trump's defeat at the ballot box in Wisconsin and nationally meant the campaign lacked standing to maintain the lawsuit. Donald J. Trump for President, Inc. v. Northland Television, LLC, No. 20-cv-385 (W.D. Wis.).

The Complaint

On March 24, 2020, Northland Television, LLC d/b/a WJFW-NBC ("WJFW") – a television broadcaster based in Rhinelander, Wisconsin – began airing "[Exponential Threat](#)," a political advertisement produced by the Democratic super PAC Priorities USA Action. The 30-second ad contained a montage of President Trump's own words, including his characterization of COVID as a "new hoax" at a campaign rally on February 28, 2020 – the day before the CDC announced the first death in the United States officially due to COVID. The President's remarks, and particularly his repeated use of the word "hoax" in connection with the novel coronavirus, sparked swift and intense condemnation, controversy, and debate.



Screenshot from "[Exponential Threat](#)," a political advertisement produced by the Democratic super PAC Priorities USA Action.

On April 13, 2020, President Trump's official campaign committee, Donald J. Trump for President, Inc., but not the President himself, sued WJFW in Wisconsin state court for defamation arising out of the ad. The campaign chose to file the lawsuit in Price County, where, in the 2016 presidential election, 60% of voters cast ballots in favor of Trump to 35% for Hillary Clinton.

The campaign alleged that the ad misrepresented the "hoax" comment: according to the complaint, President Trump's use of the word "hoax" referred to Democratic leaders' responses to the pandemic, not to COVID itself. The complaint further asserted that the ad was intended to "impede the purpose and goal of the Trump Campaign" and that it caused injury by conveying the allegedly false implication that "the Trump Campaign does not believe the coronavirus pandemic is real" and by "causing [people] not to vote for its candidate for reelection."

The lawsuit was the fourth defamation case brought by the Trump campaign against news organizations in the span of just three months, and it was plainly an attempt to chill critical speech on a matter of profound national importance in a swing state.

Pre-Election Filings

WJFW removed the case to federal court, which the Trump campaign initially fought but ultimately conceded. Random assignment brought the case to Judge William Conley, one of two full-time federal judges in Madison, who already had several controversial voting rights/absentee ballot cases on his docket. While the defamation case was pending, the Court issued several decisions expanding voter access, most of which were reversed by the U.S. Supreme Court on an emergency petition.

On May 6, 2020, the station moved to dismiss for failure to state a claim under Federal Rule 12(b)(6). WJFW's motion argued that the challenged ad: was of-and-concerning President Trump himself, not the campaign committee that actually brought the lawsuit; communicated a constitutionally protected expression of political opinion; and was not materially false. WJFW also argued that the Trump campaign failed to plausibly allege "actual malice" fault as the First Amendment requires.

On May 12, 2020, Priorities USA Action moved to intervene as a co-defendant and filed its own motion to dismiss for failure to state a claim, advancing largely the same arguments for dismissal made by WJFW. Rather than wait for the court to rule on the motion to intervene, however, the Trump campaign filed a new complaint against Priorities USA Action, followed by a 90-page opposition brief to its motion to dismiss.

On July 9, 2020, the parties filed a joint discovery plan, in which WJFW notified the Court that if the matter were to proceed, WJFW anticipated third-party discovery from a number of federal officials including President Trump, Vice President Mike Pence, Dr. Deborah Birx, and Dr. Anthony Fauci. The Trump campaign responded by reserving its right to "assert at the appropriate time all applicable objections," specifically including executive privilege.

Post-Election Filings

On November 9, 2020, two days after the Associated Press and several major broadcast networks called the 2020 presidential election for Joe Biden, WJFW filed a supplemental motion to dismiss for lack of standing under Rule 12(b)(2). As WJFW noted, one of the elements of Article III standing is "redressability" – i.e., the plaintiff must show its requested relief would in fact remedy the injury it allegedly suffered. WJFW observed that, notwithstanding President Trump's characterization of the 2020 election results as yet another "hoax," the court could not possibly remedy his campaign's alleged injury of people choosing "not to vote" for its candidate.

Two days following the filing of the supplemental motion, the Trump campaign reached out to WJFW's counsel requesting agreement to dismiss the litigation with prejudice. The parties shortly filed a Stipulation for Dismissal and Release. In addition to resolving the lawsuit, the stipulation forecloses any claims against WJFW or the Priorities USA Action super PAC by the campaign "and its candidate" arising out of any advertising for the 2020 election.

The court officially closed the case on November 25, 2020, and just a few days later Wisconsin completed a recount that the Trump campaign had requested – and for which it had to pay \$3 million – resulting in an even larger margin of victory in the state for President-elect Biden. The outcome has now been certified under state law.

WJFW was represented by Charles D. Tobin, Ashley J. Kissinger, and Maxwell S. Mishkin of Ballard Spahr LLP, along with their former colleague Al-Amyr Sumar (now with The New York Times), and Brady C. Williamson and Mike B. Wittenwyler of Godfrey & Kahn S.C. Priorities USA Action was represented by Marc E. Elias, Ezra W. Reese, David L. Anstaett, and Brandon M. Lewis of Perkins Coie LLP. Donald J. Trump for President, Inc., was represented by Eric M. McLeod and Lisa M. Lawless of Husch Blackwell LLP.

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