

**Erika Peterman v. Republican National Committee
No. 17-66-M-DLC (D. Mont. March 19, 2018)**

Year	2018
Court	United States District Court for the District of Montana
Key Facts	Plaintiff Erika Peterman is a photographer who was hired by the Montana Democratic Party to take photographs of Democratic candidate Rob Quist at an event; she took the photographs and gave limited license to the Montana Democratic Party to use the photographs. Two months later, Peterman was informed that the Republican National Committee (“RNC”), a U.S. political organization responsible for developing and promoting the Republican political platform, had sent out a mass direct mailing, using one of her photographs of Quist (“Work”), that was designed to negatively depict him. Peterman filed a complaint alleging copyright infringement and intentional interference with economic advantage based on RNC’s copying, using, and distributing her photograph. RNC filed a motion to dismiss, alleging its use was a fair use.
Issue	Whether use of a copyrighted photograph by a political party for a political mailing is a fair use.
Holding	The court determined that RNC’s use of Peterman’s photograph could not, at the motion to dismiss stage, be found fair. The court concluded that the first factor, purpose and character of the infringing work, “d[id] not favor a finding of fair use at this stage since the Work’s purpose remains a disputed issue of fact and RNC’s use was, at best, minimally transformative.” Indeed, “absent the inclusion of a treble clef attached to the commentary, the entirety of the visual aspects of the Work remain unaltered in RNC’s use.” The second factor, nature of the copyrighted work, “weigh[ed] against a finding of fair use” because the Work “includes elements in its framing that are not factual in nature,” and rather “creatively and visually develops a portrait of Quist and his candidacy.” The third factor, amount and substantiality of the portion used, “weigh[ed] against a finding of fair use” because RNC “copied the entirety of Peterman’s Work quantitatively and qualitatively for use in its political mailers.” The final factor, effect of the use upon the potential market, could not be assessed because it “remains a disputed issue of fact;” “it is uncertain whether the use of the Work in a political mailing criticizing Quist is likely to diminish the potential sale of the Work, interfere with the marketability of the Work, or fulfill the demand for the Work.” Weighing the factors, and resolving all issues in favor of Peterman, the court found that “disputed issues of material fact remain on whether RNC’s use of Peterman’s Work constituted a fair use.” The court thus denied RNC’s motion to dismiss the copyright infringement claim.
Tags	Ninth Circuit, Photograph, Review/Commentary
Outcome	Preliminary ruling, Fair use not found

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