

**Peterman v. Republican National Committee**  
**No. CV 17-66-M-DLC (D. Mont. Feb. 22, 2019)**

Year	2019
Court	United States District Court for the District of Montana
Key Facts	Plaintiff Erika Peterman, a photographer, was hired and paid a \$500 fee by the Montana Democratic Party (“MDP”) to take photographs of Democratic candidate and singer-songwriter Rob Quist at an event. Peterman granted an unrestricted royalty-free license to the MDP and Quist campaign to use the resulting photographs. Both the MDP and Quist campaign subsequently posted one photograph (the “Work”) to Facebook without attribution or copyright information. Peterman later learned that the Republican National Committee (“RNC”) had sent out a mailer in support of Quist’s opponent that used the Work to negatively depict Quist. The RNC mailer was prepared by a vendor who downloaded the Work from the Quist campaign’s Facebook page, photoshopped it, and added a treble clef and text reading “For Montana Conservatives, / Liberal Rob Quist / Can’t Hit the Right Note.” The court denied the RNC’s motion to dismiss Peterman’s copyright claim because disputed issues of material fact remained as to whether the RNC’s use was a fair use.
Issue	Whether use of a copyrighted photograph by a political party in a mailer to criticize an opponent is a fair use.
Holding	On cross-motions for summary judgment, the court found that the balance of factors favored fair use. On the first factor, purpose and character of the use, the court found the vendor’s two “minimal alterations” to the Work alone were insufficiently transformative. Yet, by “us[ing] Quint’s musicianship to criticize his candidacy,” the mailer “changed the function and meaning of the Work by connoting a critical message not inherent in the Work itself.” This purpose, along with the noncommercial nature of the mailer, favored fair use. The court rejected the RNC’s First Amendment argument, commenting that First Amendment principles are incorporated into the fair use factors and the First Amendment “does not present an additional layer of protection for unauthorized uses.” On the second factor, nature of the copyrighted work, the court changed its analysis from its opinion on the motion to dismiss from weighing against fair use to “inconclusive” in light of additional facts that the Work had been published and shared by the MDP, Quist campaign, and Peterman, despite the Work being “unequivocally creative.” The third factor, amount and substantiality of the portion used, weighed against fair use because “the RNC copied essentially the entirety of the Work” and “could have made its point as effectively without incorporating the Work into its mailer.” Finally, the court concluded that the fourth factor, effect of the use upon the potential market for or value of the original, favored fair use because “[t]he Work has no recognizable value outside of the . . . campaign, and that value has been fully realized by Peterman,” who had been paid by the MDP. The first and fourth factors being “determinative” in this case, the court granted summary judgment for the RNC on its fair use defense.
Tags	Ninth Circuit, Photograph, Review/Commentary
Outcome	Fair use found

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