

D.C. Federal Court Rejects RICO Claim Over “Hate Group” Label

By Max Mishkin

A federal judge in Washington, D.C. has tossed out a civil RICO lawsuit brought by the Center for Immigration Studies (“CIS”) against a senior official at the Southern Poverty Law Center (“SPLC”) and its former President arising out of the SPLC’s labelling CIS a “hate group.” Granting defendants’ motion to dismiss, Judge Amy Berman Jackson chided CIS for trying “to shoehorn a defamation claim into the RICO framework” and found that CIS’s “complaint is devoid of any allegation that defendants made a statement that was false.” [Center for Immigration Studies v. Cohen](#), 2019 U.S. Dist. LEXIS 156952, 2019 WL 4394838 (D.D.C. Sept. 13, 2019).

Background

Founded in 1971 in Montgomery, Alabama, SPLC is a leading non-profit dedicated to fighting hate and bigotry and seeking justice for the most vulnerable members of society. As part of SPLC’s mission, its “Intelligence Project” researches, monitors, and publishes reports on organizations and individuals that SPLC believes may be, or are, hate groups or extremists. Among other activities, the Intelligence Project publishes a quarterly Intelligence Report, a weekly newsletter, and the *Hatewatch* blog, which report on domestic hate groups, extremists, and others who – in SPLC’s opinion – espouse or support hatred or bigotry.

In 2016, SPLC designated CIS an anti-immigrant hate group.

Based on its research and investigations, the Intelligence Project expressly designates certain organizations as “hate groups,” which SPLC defines in part as organizations that – based on their official statements or principles, the statements of their leaders, or their activities – have beliefs or practices that attack or malign an entire class of people, typically for their immutable characteristics.

In 2016, SPLC designated CIS an anti-immigrant hate group. SPLC published a lengthy report explaining the reasons for this designation, noting in part that the organization has a decades-long history of circulating racist writers, while also associating with white nationalists. SPLC’s report also details the history of CIS and its close links to individuals and organizations who advocate that immigration be curtailed to preserve a white majority in America or who espouse white nationalist, racist, and anti-Muslim or anti-Semitic views.

The Complaint

On January 16, 2019, CIS filed a one-count complaint in the U.S. District Court for the District of Columbia against Richard Cohen, then-President of SPLC, and Heidi Beirich, the director of

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the Intelligence Project. CIS alleged that Cohen and Beirich engaged in “a scheme to falsely designate CIS a hate group and destroy it” through blog posts that constituted predicate acts of wire fraud, and that this scheme amounted to a conspiracy in violation of the Racketeer Influenced and Corrupt Organizations (“RICO”) Act. CIS sought treble damages and attorney’s fees, as well as a permanent injunction “prohibiting Defendants from again calling CIS a hate group and requiring Defendants to state on the SPLC website that CIS is not a hate group.”

On February 12, 2019, Cohen and Beirich moved to dismiss for failure to state a claim on the grounds that (1) CIS did not allege a cognizable predicate offense under the RICO statute; (2) CIS did not allege a pattern of racketeering activity; (3) CIS did not allege each defendant’s participation in the scheme; (4) CIS did not allege proximate causation between the predicate acts and the alleged harm; and (5) CIS’s RICO claim was in reality a thinly-disguised defamation claim barred by the First Amendment, because a “hate group” designation is non-actionable opinion.

On March 19, 2019, after providing CIS with the opportunity to withdraw its lawsuit, Cohen and Beirich additionally moved for sanctions under Rule 11, asserting that CIS’s claim was frivolous and filed for the improper purpose of violating SPLC’s First Amendment rights.

The Court’s Decisions

On September 13, 2019, the court granted Cohen and Beirich’s motion to dismiss. As the court explained, the ostensible RICO conspiracy was predicated on alleged acts of wire fraud, namely the “false” designation of CIS as a “hate group,” but “[t]he upshot of the complaint is that defendants advanced a conclusion that was debatable, and that this expression of a flawed opinion harmed plaintiff’s reputation.”

Though the court stated that it “need not address [any] First Amendment arguments” because the RICO claim was flawed in its own right, the decision nevertheless observed that CIS “has clearly tried to shoehorn a defamation claim into the RICO framework,” and the court reiterated that “a plaintiff complaining about a defamatory statement cannot end-run the requirements for a defamation claim by pleading it as a RICO violation.”

This is one of two decisions in recent weeks dismissing claims arising from SPLC designations of an organization as a “hate group.” On September 19, the U.S. District Court for the Middle District of Alabama dismissed defamation, trademark, and civil rights claims brought by Coral Ridge Ministries Media, Inc. over its designation by SPLC, which allegedly cost it donations through Amazon’s AmazonSmile charitable-giving program. See [Coral Ridge Ministries](#)

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[Media, Inc. v. Amazon, Inc.](#), 2019 U.S. Dist. LEXIS 159685, 2019 WL 4547064 (M.D. Ala. Sept. 19, 2019).

In a minute order accompanying the CIS dismissal, the court denied Cohen and Beirich’s motion for sanctions. The court explained that “although it found plaintiff’s reliance on RICO to be misplaced in what was essentially a defamation case,” it “did not find the complaint to be completely frivolous.”

Max Mishkin is an associate at Ballard Spahr in Washington D.C. Defendants were represented by Chad R. Bowman of Ballard Spahr LLP and by former Ballard attorney Dana Green, now with The New York Times. Plaintiff was represented by Howard W. Foster and Matthew Galin of Foster PC, G. Robert Blakey of the Law Office of G. Robert Blakey, and in-house attorney Julie B. Axelrod.

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