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Stop the Steal Organizer's Narrowed Defamation Claim Proceeds to Discovery

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Stop the Steal organizer's defamation case against an online news publication and its former reporter can proceed to discovery, a judge in the U.S. District Court for the Western District of Texas ruled in March. [Bostic v. The Daily Dot, et al.](#), No. 1:22-cv-158-RP (W.D. Tex.).

Ruling on a motion to dismiss filed by The Daily Dot and its former reporter, Zachary Petrizzo, Judge Robert Pitman held that an article's characterizations of Plaintiff Daniel Bostic as a "Jan. 6 Capitol riot organizer" and a person who "helped coordinate the Jan. 6 Capitol insurrection" were capable of being proven true or false, and therefore actionable in defamation, and that Bostic adequately pleaded the defendants published them with actual malice. The court also, however, ruled that several other aspects of the article were not actionable as a matter of law, dismissed The Daily Dot's parent company from the case, and appeared to express skepticism over Bostic's claims.

Background

Bostic is a former "aspiring actor" who helped produce a movie titled "The Plot Against the President" that focuses on the "true story" of "Russiagate," which promotional materials describe as the "the biggest political scandal in US history."

Immediately after the 2020 presidential election, Bostic began helping the "Stop the Steal" organization promote the lie that the election was stolen and amplify the call to overturn its result. Among such efforts, Bostic worked as a media contact for the group and spoke as a "featured guest" at several Stop the Steal events, including a November 14, 2020, rally in Washington, D.C., broadcast by C-SPAN. During that speech Bostic boasted of founding the organization in 2018 with Ali Alexander, his long-time friend and Roger Stone protégé.

Bostic also helped Stop the Steal leaders promote a "Wild Protest" for January 6, a day on which the group vowed to "take to the US Capitol lawn and steps" to demand that Congress refuse to certify the results of the presidential election. Bostic told his more than 50,000 followers on Twitter, "I'd better see YOU in Washington, DC on January 6th!" and urged them to join "#WildProtest." When then-President Trump spoke the next morning at the Ellipse, Bostic watched from the VIP section. The speech broadcast to the crowd from jumbo screens Bostic later said he paid for with his credit card. As fellow VIPs and the crowd heeded Trump's call to march to the Capitol, Bostic joined them, tweeting a video of the procession with the caption "Storming the Capitol #StopTheSteal."

After the attack on the Capitol that followed, Stop the Steal and Ali Alexander drew immediate scrutiny. So did Bostic. Among the news coverage was a Salon article that explored what Salon called the pair's prior "schemes." Salon also reported that Bostic and Alexander "can be clearly identified in video clips climbing the Capitol steps with Alex Jones" during the Capitol attack.

On February 23, 2021, The Daily Dot published an article by Zach Petrizzo about the recent announcement that Bostic had been invited to a leading conservative conference. Titled "Jan. 6 'Stop the Steal' organizer says he will be attending CPAC," the article cited other reports about Alexander and Bostic, , quoted the Salon article's reporting that Bostic could be seen "climbing the Capitol steps," and generally criticized CPAC for inviting Bostic

and others who had worked “to delegitimize the results of the 2020 election.” The article characterized Bostic as a “Jan. 6 Capitol riot organizer and ‘Stop The Steal’ leader” who had “helped coordinate the Jan. 6 Capitol insurrection.”

Plaintiff’s Claims

Bostic sued The Daily Dot, LLC, Petrizzo, and the Daily Dot’s parent company a year after publication. He asserted claims for defamation against all defendants and a tortious interference claim against Petrizzo, alleging the article falsely accused Bostic of organizing the violent attack on the U.S. Capitol. Among other alleged harms—including his shaken faith in “the goodness of his fellow citizens, of God, and of his country”—Bostic claims the article hurt his efforts to promote his movie at CPAC. He seeks \$15 million in damages.

Shortly after filing, Bostic explained on conservative podcasts that his case was funded by a “Legal Offense Trust” operated by Kashyap “Kash” Patel, a former Trump Administration official and ex-aide to former Congressman Devin Nunes. As Bostic explained, he wants the case to “embolden” others to file similar suits and thus force “insurance companies [to] think twice about insuring outlets that write things like this.”

Court’s Ruling on Defendants’ Motion to Dismiss

The Daily Dot and Petrizzo moved to dismiss Bostic’s claims on July 1, 2022, arguing that the article cannot reasonably be read to accuse Bostic of plotting the violence that occurred in and around the Capitol on January 6. They also argued that the article’s characterizations of Bostic’s role on January 6 are not statements that are capable of being proven true or false. Finally, they argued Bostic was a limited-purpose public figure who failed to adequately plead actual malice. The Daily Dot’s parent company filed a separate motion to dismiss incorporating those arguments and adding that Bostic failed to allege grounds for holding it liable.

The district court on March 1, 2023, granted the parent company’s motion to dismiss on the ground that Bostic failed to allege a basis for holding it liable for its subsidiary’s conduct. It denied the motion by The Daily Dot and Petrizzo, but made several rulings that narrowed the statements at issue and imposed a high standard of fault.

Judge Pitman ruled that most of Bostic’s complaints about the article are nonactionable. He ruled the headline’s description of Bostic as a “Jan. 6 ‘Stop the Steal’ Organizer” was substantially true because Bostic attended the protest that day, “which was at least partially planned by the group Stop the Steal which he had helped to organize.” The judge also ruled that the article’s reporting on the Salon accusation that Bostic could be seen “climbing the Capitol steps” was privileged under Texas law as an “accurate reporting of allegations made by a third party” on a matter of public concern. (The judge also noted that the article “does not independently state that Bostic climbed the Capitol steps,” and that The Daily Dot “explicitly limit[ed]” its description of what it found to Bostic “defend[ing] the Capitol riots, while he marched in Washington, D.C.”). Further, Judge Pitman ruled that the article’s use of a screenshot of the C-SPAN coverage of Bostic’s November 14, 2020, speech was not defamatory.

The court ruled, however, that the phrases “Jan. 6 Capitol riot organizer” and “helped coordinate the Jan. 6 Capitol insurrection” can plausibly be read to “refer to provable and specific facts and events,” in particular to “the violent events on [or] near the Capitol steps and the storming of the Capitol building.” Judge Pitman further emphasized that “encouraging attendance” is not necessarily the same as “organizing.”

The phrases “Jan. 6 Capitol riot organizer” and “helped coordinate the Jan. 6 Capitol insurrection” can plausibly be read to “refer to provable and specific facts and events.”

Finally, Judge Pitman ruled that while Bostic was a limited-purpose public figure for the purposes of the article, Bostic had plausibly alleged that the defendants published with actual malice. The court emphasized that “[i]t is rare that a plaintiff will be able to definitely assert what a defendant knew prior to publication” and said that, while Bostic’s allegations “may not speak to the Daily Dot Defendants’ state of mind leading up to publication, . . . [a]t this stage, Bostic has shown more than ‘scant assertions’ that the Daily Dot Defendants acted with malice.”

Bostic, the court noted, alleges that Petrizzo tried to get Bostic “banned” from CPAC and allegedly exhibited malice toward Bostic during a showing of Bostic’s film four months after the article was published. And the court explained that defendants plausibly could have used the C-SPAN image, as Bostic alleged, to knowingly mislead readers into thinking it showed Bostic speaking on January 6. Taken together, it concluded, the allegations allowed for a plausible inference of actual malice at the time of publication.

Still, the court emphasized, “[t]here are reasons to doubt Bostic’s characterization of the events.” Further, it explained, “[i]f Stop the Steal did organize events that led to the January 6 insurrection, and Bostic was listed as the media contact for Stop the Steal, such evidence will likely be relevant for summary judgment.”

Discovery is now underway, with dispositive motions due in the spring of 2024.

Matthew Cate, Ashley Kissinger, and Chad Bowman of Ballard Spahr LLP represent Defendants The Daily Dot, its parent Fragment Media Group (formerly known as Clarion Media Group), and Zachary Petrizzo. Plaintiff Daniel Bostic is represented by Jason Greaves of Binnall Law Group.

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