

The Gateway Pundit says he's the one being defamed

The Gateway Pundit, the far-right conspiracy theorist who is the target of a high-profile defamation case in the St. Louis Circuit Court, is attempting to turn the tables on his accusers.

On Jan. 16, lawyers for The Gateway Pundit filed a counterclaim against two Georgia poll workers, Ruby Freeman and daughter Wandrea "Shaye" Moss, who sued him for libel in December 2021 for accusing them of voter fraud in the counting of ballots in the 2020 presidential election. The counterclaim also names as defendants two of the nonprofit legal groups that are part of the women's legal team and three individuals serving as lawyers for those nonprofits.

The counterclaim is "right out of the Donald Trump-warrior playbook," said Michael A. Kahn, a prominent St. Louis attorney with expertise in First Amendment issues, who is not involved in the case. "It's an unusual and unusually aggressive move. Essentially the defendants claim they themselves have been libeled by a lawsuit that accuses them of libeling the plaintiffs."

But asserting libel against himself is not without precedent for The Gateway Pundit. In December 2020, the publication, its owner, James "Jim" Hoft of St. Louis and his identical twin brother Joe Hoft, alleged libel against Dean S. Miller, a prize-winning journalist who had written an online story debunking a piece that had appeared in The Gateway Pundit the previous October. The Gateway Pundit story, which carried Joe Hoft's byline, had made allegations concerning Hunter Biden's laptop.

St. Louis County Circuit Court Judge Kristine Kerr dismissed

the suit against Miller in late 2021. She noted, among other things, that Miller's story did not actually contain "the exact words that are alleged to be defamatory."

Even if the counterclaim is eventually dismissed by the judge, Kahn said, it may serve to "muddy the waters" and to delay the trial in the case of the two poll workers, now scheduled for February of 2024. It also may create a financial concern for the lawyers representing the two women, because it seeks damages against them.

The suit now in St. Louis Circuit Court is one of a handful across the country that is testing how far news organizations like Fox News and One America News Network as well as website publishers can go in purveying misinformation without being found guilty of violating the nation's high standards for proving libel. Those standards, in connection with public figures require proof of "actual malice," a legal term meaning that the false statement was published with reckless disregard for the truth.



Jesse Herring, 23, sells leftover Trump 2020 flags in Upland, Southern California, 23 days before the president leaves office after losing the 2020 election. (Photo by Russ Allison Loar via Flickr)

Editor's Note: This story is part of GRJ's exclusive coverage of The Gateway Pundit's legal disputes involving coverage of the 2020 presidential election.

Beginning in November of 2020, The Gateway Pundit published dozens of articles accusing the two Georgia women of [voter fraud](#) by processing the same votes for Joe Biden multiple times while election observers weren't looking. The articles at various times accused one or both women of having been ["crooked,"](#) of having committed ["fraud"](#) and of having "flip(ped) Georgia for Beijing Biden by their actions." It

asked why they weren't being prosecuted for "these crimes."

The articles continued for months despite the fact that Georgia election officials immediately investigated and publicly announced there was no basis to the allegations. The women nevertheless received [death threats and other harassment](#). Their public testimony to the Special Committee Investigating the Jan. 6 attack on the Capitol provided an emotional highlight to one of the committee's hearings last summer.

In the counterclaim, The Gateway Pundit's lawyers contend that the suit by the two poll workers "is not an ordinary defamation case," because it is intended "to drive ... (The Gateway Pundit) out of business. It is a form of political lawfare and lacks legal merit."

The Gateway Pundit is represented by St. Louis lawyer John C. Burns, who uses a post office box as an address, and by the Randazza Legal Group, of Las Vegas, including its namesake attorney Marc J. Randazza, who has represented several far-right figures.

The legal team representing the two poll workers is made up of three private firms and two nonprofits. The private firms include the powerful St. Louis-based firm of Dowd Bennett. The nonprofits are United to Protect Democracy, based in Washington, D.C., and the Media Freedom and Information Access Clinic MFIA at Yale Law School in New Haven, Connecticut.

United to Protect Democracy calls itself a non-partisan group "dedicated to defeating the authoritarian threat, building more resilient democratic institutions, and protecting our freedom and liberal democracy." The MFIA Clinic defines its mission as "to support robust investigative journalism in the digital age and to advance the public's right of access to information needed for democracy to function."

The counterclaim does not name the for-profit law firms as

defendants. In naming United to Protect Democracy, Yale University (through the MFIA Clinic) and the lawyers, the counterclaim cites statements made outside the courtroom, either in press releases or formal statements on the nonprofits' websites or Twitter accounts, or in one radio interview.

For example, the United to Protect Democracy [press release](#) that announced the filing of the suit in 2021 included a quote from staff counsel Brittany Williams: "Lies like those that The Gateway Pundit knowingly told about Ruby Freeman and Shaye Moss cannot be divorced from the devastation they leave behind—both for the targeted individuals and for our democracy itself."

The counterclaim, which names Williams as a defendant, asserts, "At no time did Counterclaim Plaintiffs knowingly tell lies about Ms. Freeman or Ms. Moss."

Likewise, the MFIA Clinic also published a [press release](#) announcing the suit on its website and Twitter account. The release quoted its director, David Schulz, as saying, "the type of disinformation campaign waged by The Gateway Pundit is undermining the very ability of our democracy to function."

But "at no time did Counterclaim plaintiffs engage in a disinformation campaign," the counterclaim contends. It names Schulz as a defendant along with the MFIA Clinic.

Statements like those made by Williams, Schulz and a third defendant, John Langford, of United to Protect Democracy, "impute a lack of integrity and misconduct in the field of journalism, [The Gateway Pundit's] line of calling," the counterclaim alleges. As a result, the Hoft brothers and The Gateway Pundit "suffered ... impairment of reputation and standing." The counterclaim asks for compensatory and punitive damages against all the defendants and for payment of attorneys' fees.

Among the arguments The Gateway Pundit's lawyers make in defending the Hofts' coverage is one that separates fact from opinion. "The statements at issue," they say, "... are either statements of opinion based on disclosed facts or statements of rhetorical hyperbole that no reasonable reader is likely to interpret as a literal statement of fact." Such statements, their counterclaim says, "cannot form the basis of defamation and related tort claims..."

Kahn, the St. Louis First Amendment expert not involved in the case, said the Hofts have "sued the plaintiffs and their lawyers over descriptions of the lawsuit that were made by the lawyers in interviews and on websites." Because the actual allegations made in legal filings, like almost all statements made in judicial proceedings, are "absolutely privileged," Kahn explained, those statements cannot be grounds for a defamation suit.

Thus, the Hofts' attorneys have focused on the statements made outside the courtroom, Kahn said. To those statements, the law applies its "fair reportage" privilege, he explained. Accurate descriptions – often, by the media – of allegedly defamatory statements made in a judicial proceeding fall within this privilege, he said. Thus the scope of that privilege in this situation will hinge on whether the judge finds that the counterclaim defendants did or did not go beyond merely accurately summarizing the content of their suit.

"But leaving aside whether that privilege applies here," Kahn commented, "the key element of any libel claim hinges on whether the allegedly libelous statement is true or false. Truth, after all, is a complete defense to a libel claim."

The counterclaim defendants have 30 days (to Feb. 16) to respond to the counterclaim. In their response, Kahn said, the poll workers' lawyers could file an answer denying the claim or a motion asking the judge to dismiss the counterclaim for failure to state a viable claim.

The counterclaim defendants Williams and Schulz, of United to Protect Democracy and Yale, respectively, declined comment, as did Matt Ampleman, of Dowd Bennett. The case is being conducted in the courtroom of St. Louis Circuit Judge Jason Sengheiser.

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