

DISTRICT COURT

Clausnitzer v. Bunn, Fergus DV 00-129, 10/24/2001

VERDICT: §1983, initiative signature gatherer's political expression/speech rights violated by owner of motel polling place but \$0 damages..\$1,500 settlement by County.

A Lewistown jury found that T.J. Clausnitzer's constitutional rights of political expression and free speech were violated by Paul Bunn, but awarded \$0 damages. The parties dispute who prevailed for purposes of attorney fees.

Clausnitzer went to Bunn's Yogo Inn in Lewistown 6/6/00 to gather signatures for the petition to place the game farm initiative on the ballot on behalf of Sportsmen for I-143. She was paid 25¢ per signature. The Yogo Inn is privately owned, but a polling place for Precinct 10 in Fergus Co.

She collected signatures from 7 a.m. to 4:30 p.m., when Bunn ejected her. According to Bunn, he asked her to leave because she was approaching voters in line to vote, and told her that she could return if a government official told him that she could be present in the voting room and engage in such conduct.

According to Clausnitzer, he ordered her to leave because he did not like I-143 and grabbed her arm and forcibly removed her from the building, causing fear and emotional distress. Bunn denied that he touched her. On the way out she made 2 phone calls but was unable to reach anyone to convince Bunn to let her stay. She later returned to the Yogo and was allowed to collect signatures outside the front door, but claimed that she was forced to leave by Bunn who was heckling her and preventing her from collecting signatures.

She sued 2 days before the election and the ACLU sent a press release to many major Montana papers which published it. She alleged battery and violation of state & federal constitutional rights against Bunn and the County. She asserted that Bunn violated her constitutional rights because he ejected her on the basis of his opposition to the content of her petition, he was not an election judge or official with authority to eject her, and he did not narrowly tailor his restrictions on her right to collect signatures. The County settled for \$1,500 and issued a resolution promising to train its election judges.

Judge Phillips ruled that Bunn was a state actor and could be sued under §1983, there was no private right of action under the state Constitution, and the voter interference statute did not prevent Clausnitzer from being in the room where the votes were being cast.

Bunn submitted instructions on qualified immunity shortly after the state actor ruling, but the defense was barred at trial. On the morning of trial Clausnitzer dismissed her battery claims over Bunn's objection. Bunn was awarded fees & costs for the battery claim based on the late dismissal.

After Clausnitzer put on evidence which was objected to as related to the battery claim Phillips instructed that the battery claim had been dismissed but those same facts could be considered in the §1983 claim.

Plaintiff's Expert: Joe Kerwin, Helena (former deputy, Secretary of State Elections Bureau) (over Defendant's objection that testimony constituted legal conclusions).

Defendant's Experts: None.

Demand, \$10,000 plus \$2,250 attorney fees and a letter of apology; offer, \$0. Jury request, \$2,500; jury suggestion, \$0.

Jury deliberated 3 hours 3rd day.

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Allen Lanning (Conklin, Nybo, LeVeque & Lanning), Great Falls, and Elizabeth Brenneman (ACLU of Montana), Helena, for Clausnitzer; Randall Nelson (Nelson Law Firm), Billings, for Bunn (Mountain West Farm Bureau Ins.).