

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
____ DIVISION

COURTNEY GOODSON and
COURTNEY GOODSON CAMPAIGN

PLAINTIFFS

VS. CASE NO. 60CV-18-____

KATV, LLC, NEXSTAR BROADCASTING, INC.,
MISSION BROADCASTING, INC., TEGNA, INC.,
COMCAST OF ARKANSAS, INC., AND COX MEDIA, L.L.C.

DEFENDANTS

**EMERGENCY MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER;
REQUEST FOR EMERGENCY HEARING, OR, IN THE ALTERNATIVE,
PRELIMINARY INJUNCTION AND INCORPORATED BRIEF IN SUPPORT THEREOF**

COMES NOW, Plaintiffs, Courtney Goodson and Courtney Goodson Campaign, (Collectively "CGC"), by and through its attorneys, LaCERRA, DICKSON, HOOVER, & ROGERS, PLLC, and for its Emergency Motion for Ex Parte Temporary Restraining Order; Request for Emergency Hearing, or, in the alternative, Preliminary Injunction and Incorporated Brief in Support Thereof, states as follows:

1. On or about May 3, 2018, the Judicial Crisis Network, a 501(c)(4) located at 1455 Pennsylvania Ave NW Suite 400. Washington, D.C. 20004, began to air false, misleading, and defamatory judicial television advertising with Defendant.

2. On the same date, CGC filed a complaint with Rapid Response Team as charged by the Arkansas Judicial Campaign Conduct and Education Committee, Inc. (RRT). The RRT is an independent 501(c)(3), whose mission is to foster education for the voting public in judicial races by "displaying information about judicial candidates on a website; establishing a response team to respond to false advertisements and attacks; and providing a voluntary pledge that the candidate will disavow all false communications in the candidate's favor." See www.arkansasjudges.org

3. The RRT is charged with reviewing complaint pertaining to judicial advertising which it becomes aware by written communications from candidates seeking election to the Supreme Court of Arkansas or Arkansas Court of Appeals, or their campaign committees.

4. On May 9, 2018, RRT sent a "Request for Voluntary Withdrawal of Advertisement" to JCN after determining that CGC's complaint and supporting materials met its initial burden to support its complaint that JCN's advertisements are false or misleading. See RRT Request dated May 9, 2018 attached as Exhibit A. Specifically, RRT determined that after review of JCN's television advertising the following:

Justice Courtney Goodson did not request a pay raise. There is no evidence to support the statement that she did request a pay raise. Justice Goodson sat on the Supreme Court during the period of time the court voted to authorize Chief Justice Kemp to request a pay raise. The Supreme Court speaks with one voice and that voice is the voice of its Chief. It would be a violation of Justice Goodson's duty of confidentiality to reveal how she voted for a pay raise.

Justice Goodson did not hear cases that were filed by on or behalf of a Donor [persons or entities with whom Justice Goodson has a close personal relationship and/or who gave her money or gifts as depicted in the JCN ad]. Because Justice Goodson recused from hearing those cases, donors did not receive benefits from Justice Goodson.

Exhibit A, page 3. On May 10, 2018, RRT issued a Cease and Desist Letter to JCN demanding that JCN withdraw its advertisements immediately. See Exhibit B.

5. Early voting began on May 7, 2018 with Election Day on May 22, 2018.

6. The Defendants are actively republishing this defamatory material, hold the FCC licenses for this media market, and venue is proper.

7. On May 11, 2018, CGC's counsel provided notice to Defendants that by publishing and communicating JCN's false and misleading judicial advertising that they

are subject themselves to liability and injunctive relief. See Letters to Defendants (May 11, 2018) attached as Exhibit C.

8. As stated in Exhibit C, Defendants were advised that following receipt of Exhibit C that Defendants would have knowledge that the statements they are communicating through the JCN advertising are false and continued publication of such ads demonstrate the Defendants' reckless disregard for whether the ad is true or false. All of which constitutes actual malice on the part of the Defendants.

9. Defendants were requested to withdraw the ads before this application was sought. Due to the Defendants' reckless disregard for the truth and its continued publication of false and misleading judicial advertising, CGC brings this motion pursuant to Rule 65 of the Arkansas Rules of Civil Procedure, which permits the Court to grant a temporary restraining order "without written or oral notice to the adverse party or his attorney" if specific facts in a verified complaint "clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required." Ark. R. Civ. P. 65(b)(1).

10. As evidenced by the attached letter from CGC's counsel, Defendants are already on notice of their actions which constitute irreparable harm to CGC as early voting has begun and election day is less than two weeks away. Nevertheless, Defendants have continued to engage in such defamatory actions. Accordingly, no notice to Defendants should be required before the Court issues a temporary restraining order in this matter because Defendants have been apprised of the objective facts and have recklessly chosen to disregard those facts presumably for profits over integrity in this election.

Therefore, any such notice prior to the issuance of a temporary restraining order would be futile. Finally, no notice should be required before the Court issues a temporary restraining order because a further breach is likely to occur when Defendant continues to publish the defamatory ad during the period of early voting and in advance of Election Day on May 22, 2018.

11. In the alternative, Rule 65(a) also permits the Court to grant a preliminary injunction upon notice to the adverse party and a hearing conducted on the motion for a preliminary injunction. Ark. R. Civ. P. 65(a). Pursuant to Rule 65(a)(2), Plaintiffs request that an immediate hearing be set on the merits and advance this matter on the docket due to the election on May 22, 2018.

12. Justice Courtney Goodson has acted ethically and responsibly at all times serving as Associate Justice of the Arkansas Supreme Court. Justice Goodson has always recused from participating in any cases in which persons or entities with whom she has a close personal relationship and/or who gave her gifts. As pertinent to the television ad in question, this list includes W.H. Taylor and Associates, Keil and Goodson, John Goodson, Tyson, and the University of Arkansas Board of Trustees. Attached as Exhibit D is a summary of all cases in which Justice Goodson has recused. The underlying docket sheets for each these cases from which Justice Goodson declined to participate and recused may be found at the following address: https://caseinfo.arcourts.gov/cconnect/PROD/public/ck_public_qry_doct.cp_dktrpt_setu_p_idx

13. The Judicial Discipline and Disability Commission which previously addressed the false allegations repeated by the JCN wherein the JDDC concluded that

“the investigation initiated by the complaint did not reveal or find any evidence of judicial misconduct, wrong-doing, or incapacity within the Commission’s jurisdiction.” The complaint was dismissed as there was “insufficient cause to proceed.”

14. With respect to defamatory statement that Justice Courtney Goodson requested a pay raise of \$18,000.00 to make her salary bigger than the Governor’s, it is undisputed that Chief Justice Kemp appeared on behalf of the entire Arkansas Supreme Court to the Independent Citizens Committee to request a raise for all justices and judges. The Court held a confidential vote on the matter and as a result of that confidential vote, Chief Justice Kemp was authorized to request the pay raise for all members. There is no information, nor should there be information, as to whether Justice Goodson voted for or against requesting a raise. Audio of this request made by Chief Justice Kemp to the ICC may be accessed at the following address: [http://citizenscommission.ar.gov/Websites/citizenscommission/files/Content/4915914/ICC Meeting_051617.MP3](http://citizenscommission.ar.gov/Websites/citizenscommission/files/Content/4915914/ICC_Meeting_051617.MP3) beginning at minute 12:07.

15. A copy of the minutes from that session is attached as Exhibit E and accessible at the following website address: http://citizenscommission.ar.gov/Websites/citizenscommission/files/Content/4855643/DRAFT_AGENDA_for_051617.docx

Temporary Restraining Order or, in the alternative, Preliminary Injunction

16. Rule 65 of the Arkansas Rules of Civil Procedure provides for the issuance of a temporary restraining order and/or a preliminary injunction where it appears by verified complaint that irreparable harm or damage will or might result to the applicant if the requested relief is not granted. Ark. R. Civ. P. 65. The trial court must also consider

whether the moving party has demonstrated a likelihood of success on the merits. Three Sisters Petroleum v. Langley, 348 Ark. 167, 72 S.W.3d 95 (2002).

17. The decision to grant or deny a preliminary injunction falls within the sound discretion of the trial court. Smith v. Am. Trucking Assoc., 300 Ark. 594, 597, 781 S.W.2d 3, 5 (1989).

18. In determining whether to issue a preliminary injunction, the trial court must consider two factors: (1) whether irreparable harm will result in the absence of an injunction, and (2) whether the moving party has demonstrated a likelihood of success on the merits. See Baptist Health v. Murphy, 365 Ark. 115, 121, 226 S.W.3d 800, 806 (2006).

19. CGC will suffer irreparable harm if immediate injunctive relief is not granted and if Defendants continue to air JCN's defamatory, false, and misleading judicial advertising targeting CGC during the period in which voters across the State go to the polls for early voting up to election day on May 22, 2018.

20. This is the fourth election where dark money from JCN has been used to influence Arkansas elections. In the three prior elections the candidates supported by dark money won each and every time: Justice Wynne, Justice Womack, and Chief Justice Kemp.

21. In her 2010 bid for Associate Justice, Justice Goodson defeated her opponent by earning 57.51% of the vote. There was no dark money present in that race.

22. In 2016, similar JCN dark money ads were run against Justice Goodson in her bid for Chief Justice of the Arkansas Supreme Court. She was defeated with her opponent garnering 57.75% of the vote. While all candidates in those races were qualified, there can be no doubt that the presence of false and misleading judicial

advertising being run by the Defendants have caused and are causing irreparable harm to both the Plaintiffs and the independence of the judiciary as a whole.

23. The balance between the foregoing irreparable harm and any injury that may be suffered by Defendants if the temporary restraining order and/or preliminary injunction is granted weighs heavily in favor of CGC, the independence of the judiciary, and the voters of the State of Arkansas.

24. Moreover, public interest weighs in favor of protecting the independence of the judiciary and demonstrating to these outside dark money groups like JCN that false and misleading judicial advertising paid for by unknown donors will not be tolerated as Arkansans deserve better. Therefore, the Motion should be granted.

25. The Court should exercise its sound discretion and issue a temporary restraining order and/or issue a preliminary injunction immediately enjoining Defendants' conduct.

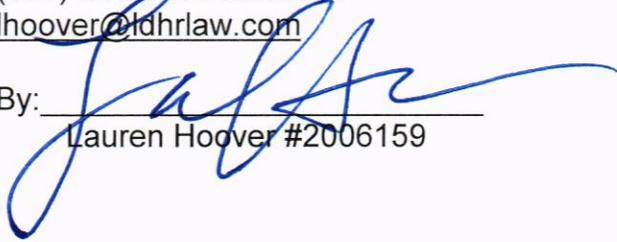
26. Pursuant to Rule 65(c), Plaintiffs request a reduced bond in light of the public interest and to protect the integrity and independence of the Arkansas judiciary from outside dark money.

WHEREFORE, Plaintiffs, Courtney Goodson and Courtney Goodson Campaign, hereby request that the Court issue a temporary restraining order and/or preliminary injunction ordering Defendants to refrain from airing JCN's defamatory, false, and misleading judicial advertising targeting CGC during the period in which voters across the State go to the polls for early voting up to election day on May 22, 2018 and, in the event of a runoff, through the conclusion of the election.

Respectfully submitted,

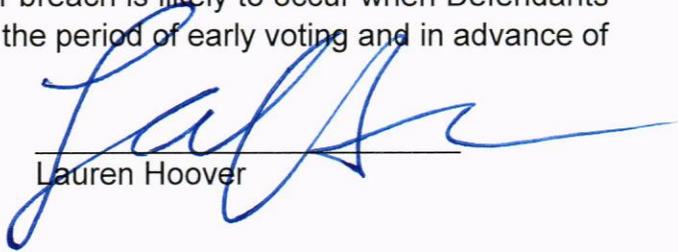
**COURTNEY GOODSON AND
COURTNEY GOODSON CAMPAIGN**

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CERTIFICATION OF ATTORNEY

I, Lauren Hoover, do hereby state, that efforts have been made to notify Defendants of this action prior to filing as demonstrated by Exhibit C. No further efforts should be required to provide notice to Defendants before the Court issues a temporary restraining order in this matter because Defendants have been apprised of the objective facts and have recklessly chosen to disregard those facts presumably for profits over integrity in this election. Therefore, any such notice prior to the issuance of a temporary restraining order would be futile. Finally, no notice should be required before the Court issues a temporary restraining order because a further breach is likely to occur when Defendants continue to publish the defamatory ad during the period of early voting and in advance of Election Day on May 22, 2018.


Lauren Hoover

