

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
\_\_\_\_ DIVISION

COURTNEY GOODSON and  
COURTNEY GOODSON CAMPAIGN

PLAINTIFFS

VS. CASE NO. 60CV-18-\_\_\_\_

REPUBLICAN STATE LEADERSHIP COMMITTEE  
-- JUDICIAL FAIRNESS INITIATIVE

DEFENDANT

**VERIFIED COMPLAINT AND REQUEST FOR PRELIMINARY INJUNCTION**

COMES NOW, Plaintiffs, Courtney Goodson and Courtney Goodson Campaign. (Collectively "CGC"), by and through its attorneys, LaCERRA, DICKSON, HOOVER, & ROGERS, PLLC, and for its Verified Complaint and Request for Preliminary Injunction states as follows:

1. Justice Courtney Goodson is a candidate for re-election to Position 3 of the Arkansas Supreme Court. The principal campaign committee for Justice Goodson is the Courtney Goodson Campaign ("CGC"). The principal campaign committee is located in Pulaski County, Arkansas.

2. The Republican State Leadership Committee – Judicial Fairness Initiative ("RSLC-JFI") is an Independent Expenditure Committee registered with the Arkansas Secretary of State's office. RSLC-JFI is located at 1201 F Street, NW, Suite 675, Washington, DC 20004. As required by Arkansas law, RSLC-JFI has designated Sarah Drye as the Resident Agent. Such Agent resides in Pulaski County, Arkansas.

3. RSLC-JFI is currently and actively publishing false, misleading, and defamatory material about Justice Goodson. RSLC-JFI is utilizing local media broadcasters who hold FCC licenses for Pulaski County, but the range of which extends

into other counties. It is also currently and actively distributing mailers containing false, misleading, and defamatory material in Pulaski County and elsewhere both in print and online. This Court has jurisdiction over the parties and venue is proper. Copies of the pertinent 4-page mailer is attached as **Exhibit A** to this Complaint. The television advertisement which began running on or about October 23, 2018, states as follows:

Courtney Goodson took a \$50,000 trip to Italy on a donor's yacht. And hundreds of thousands in contributions from law firms that go before her Court. Huge gifts from donors. How can she be fair? Reject Scandal. Reject Courtney Goodson.

Such television advertisement cites to a National Review "article" dated February 15, 2016, which is in fact a document titled "Bench Memos" and written by Jonathan Keim, who in 2016 was counsel for the Judicial Crisis Network ("JCN"). This statement is totally false by omission because Justice Goodson has recused from any case involving the donor of the trip to Italy and from any law firm which can possibly be tied to such contributions.

4. An election for the position of associate justice of the Supreme Court was held in May 2018. As a result of that election, a run-off election between David Sterling and Justice Courtney Goodson is to be held on November 6, 2018. Early voting for the run-off election began October 22, 2018.

5. During the May 2018 primary election, JCN sent mailers and advertisements that were deemed false and misleading – not only by the Rapid Response Team as charged by Arkansas Judicial Campaign Conduct and Education Committee, Inc. ("RRT"), but also by the Hon. Chris Piazza in Goodson v. TEGNA, Pulaski County Circuit Court 2<sup>nd</sup> Division 60CV-18-3121. A copy of the Preliminary Injunction is attached hereto as **Exhibit B.**

6. 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](http://www.arkansasjudges.org).

7. On October 15, 2018, CGC filed with the RRT a complaint against RSLC-JFI and attached the 4-page mailer and an amended statement of complaint. The Complaint accepted by the RRT explains that the four pages of exhibits were mailed together. According to the RRT and alleged here by the Plaintiffs, three of the pages contain statements about Justice Goodson that are the same as, or almost the same as, those made in mailed flyers and in advertisements paid for by the JCN in the May 2018 election. The fourth page makes statements in support of David Sterling. The Sterling exhibit states that it is paid for by RSLC-JFI. See **Exhibit A**.

8. The RRT is charged with reviewing complaints pertaining to judicial advertising, of 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.

9. On October 16, 2018, RRT sent a “Request for Voluntary Withdrawal of Advertisement” to RSLC-JFI after determining that CGC’s complaint and supporting materials met its initial burden to demonstrate that RSLC-JFI’s advertisements are false or misleading. See RRT Request dated October 16, 2018 attached as **Exhibit C**. Specifically, RRT determined the following:

Having previously reviewed this evidence, the RRT again determines that CGC has met its initial burden to support its complaint that [RSLC-JFI]

flyers contain statements that are false or misleading. A person of ordinary intelligence would conclude that:

- 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 Courtney Goodson did not hear cases that were filed by or on behalf of a Donor. Because Justice Goodson recused from hearing those cases, donors did not receive benefits from Justice Goodson.

10. On October 18, 2018, RSLC-JFI responded to RRT's complaint. Rather than the substance of the Complaint, RSLC-JFI instead attacked the RRT as a "kangaroo court" and a "sham" and further individually attacked the members of the RRT by attaching such individual members contributions to candidates in partisan elections. Notably, RSLC-JFI does not identify its individual donors and instead receives 100% of its funding from the RSLC, a 527 group. A copy of RSLC-JFI's response on October 18, 2018, is attached hereto as **Exhibit D.**

11. According to the Center for Responsive Politics, a 527 Group is a tax-exempt group organized under section 527 of the Internal Revenue Code to raise money for political activities. RSLC as a 527 group can raise unlimited funds from individuals, corporations or labor unions, but it must register with the IRS and must disclose its contributions and expenditures. No such information on RSLC donors is available for the 2018 election cycle.

12. According to the Brennan Center for Justice, RSLC has spent an estimated \$50,000 as of October 23, 2018, to run an advertisement entitled "Conservative Agenda" and "Conservative Agenda 15" in which Sterling is touted as the "most Christian

candidate” in the ad. These figures have not been updated to account for RSLC-JFI recent ad purchases, but it is estimated to be over \$500,000.00. In the May primary, RSLC-JFI spent an estimated \$249,020 to run pro-Sterling advertisements. However, the RSLC-JFI printed mailers and television advertisements at issue here contain false, misleading, and defamatory statements against Justice Goodson and her campaign.

13. On October 19, 2018, after review of RSLC-JFI’s response, the RRT issued a Cease and Desist Letter on behalf of Arkansans which stated in part:

According to our charge, our purpose is to prevent the use of false or misleading information in the election of a candidate to the Arkansas Supreme Court. We asked you to agree to stop publishing this false and misleading information immediately and to agree that you will not publish these false and misleading statements during this run-off election. Instead of a reasoned response to our Letter Requesting Withdrawal, your letter contains accusations and name calling; and is devoid of substantive information showing the truth of the advertisements. Consequently, the RRT issues this Cease and Desist Letter demanding that RSLC stop mailing flyers and agree to refrain from publishing these same false and misleading statements during this run-off election.

This Cease and Desist Letter will be released in the public domain immediately. We will issue a Press Release of the findings that the RSLC flyers contain false and misleading information, along with a statement that the RSLC’s disregard for fair or truthful advertising impugns the integrity of the judicial election process.

A copy of the Cease and Desist Letter is attached hereto as **Exhibit E**.

14. RSLC-JFI was provided notice of the RRT’s determinations that it was publishing and communicating false and misleading judicial advertising. Such Defendant was effectively placed on notice yet shun and mock the actions of the RRT.

15. Having been advised of the false and misleading nature of their communications, continued publication of such ads demonstrate the Defendant’s reckless disregard for whether the advertisements are true or false. This continued publication constitutes actual malice on the part of the Defendant.

16. A viable action for defamation turns on whether the communication or publication tends or is reasonably calculated to cause harm to another's reputation. Dodson v. Allstate Ins. Co., 345 Ark. 430, 47 S.W.3d 866 (2001); Southall v. Little Rock Newspapers, Inc., 332 Ark. 123, 964 S.W.2d 187 (1998); Thomson Newspaper Publishing Inc. v. Coody, 320 Ark. 455, 896 S.W.2d 897 (1995). The following elements must be proved to support a claim of defamation, whether it be by the spoken word (slander) or the written word (libel): (1) the defamatory nature of the statement of fact; (2) that statement's identification of or reference to the plaintiff; (3) publication of the statement by the defendant; (4) the defendant's fault in the publication; (5) the statement's falsity; and (6) damages. Dodson v. Allstate Ins. Co., *supra*; Brown v. Tucker, 330 Ark. 435, 954 S.W.2d 262 (1997); Minor v. Failla, 329 Ark. 274, 946 S.W.2d 954 (1997) (citing Mitchell v. Globe Int'l Pub., Inc., 773 F. Supp. 1235 (W.D. Ark. 1991)).

17. The allegedly defamatory statement must also imply an assertion of an objective verifiable fact. Dodson v. Allstate Ins. Co., *supra*; Dodson v. Dicker, 306 Ark. 108, 812 S.W.2d 97 (1991) (citing Milkovich v. Lorain Journal Co., 497 U.S. 1, 111 L. Ed. 2d 1, 110 S. Ct. 2695 (1990)). In order to determine whether a statement may be viewed as implying an assertion of fact, the following factors must be weighed: (1) whether the author used figurative or hyperbolic language that would negate the impression that he or she was seriously asserting or implying a fact; (2) whether the general tenor of the publication negates this impression; and (3) whether the published assertion is susceptible of being proved true or false. Dodson v. Allstate Ins. Co., *supra*; Dodson v. Dicker, *supra*.

18. The rule all courts must follow in a defamation case involving a public official was announced in New York Times Co. v. Sullivan, 376 U.S. 254 (1964). Sullivan was one of three city commissioners of Montgomery, Alabama. The publication was a full-page advertisement. The Court found that the First Amendment to the United States Constitution "prohibit[s] a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times Co. v. Sullivan, 376 U.S. at 279-280. While inaccurate speech may further the exercise of the right of free speech, the United States Supreme Court has held that "it does not follow that the lie, knowingly and deliberately published about a public official, should enjoy a like immunity." Garrison v. Louisiana, 379 U.S. 64, 75 (1964). At the time the First Amendment was adopted, as today, "there were those unscrupulous enough and skillful enough to use the deliberate or reckless falsehood as an effective political tool to unseat the public servant or even topple an administration." Id. At that time in American history, there were not televisions in 575,000 households across Arkansas where an unscrupulous person or organization could reach a voter more than five times per day and seven days per week.

19. Many types of speech are regulated and have been so for decades: e.g, insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, and solicitation of legal business. See Herndon v. Lowry, 301 U.S. 242 (1937) (insurrection); Bridges v. California, 314 U.S. 252 (1940) (contempt); Pennekamp v. Florida, 328 U.S. 331 (1946) (contempt); De Jonge v. Oregon, 299 U.S. 353 (1936) (advocacy of unlawful acts); Edwards v. South Carolina, 372 U.S. 229 (1962) (breach of the peace); Roth v.

United States, 354 U.S. 476 (1951) (obscenity); N.A.A.C.P. v. Button, 371 U.S. 415 (1961) (solicitation of legal business). Just as those types of speech are measured by the standards that satisfy the First Amendment, so is libel. New York Times Co. v. Sullivan, 376 U.S. 254, 269 (1964). In Sullivan, the Court examined the “the line between speech unconditionally guaranteed and speech which may legitimately be regulated.” Id. at 285. The Court must make an independent examination of the whole record. Id. In Sullivan, the Court did not determine that actual malice was present because “there was no evidence whatever that they were aware of any erroneous statements or were in any way reckless in that regard.” Id. at 286. That is not true of the Defendant as seen in their mocking response attached previously as **Exhibit D.**

20. The United States Supreme Court and Arkansas Supreme Court have already determined that the State has a compelling state interest in preserving public confidence in the integrity of the judiciary. Williams-Yulee v. Fla. Bar, 135 S. Ct. 1656, 1666 (2015); Simes v. Ark. Judicial Discipline & Disability Comm'n, 368 Ark. 577, 585 (2007). See also Huffman v. Ark. Judicial Discipline & Disability Comm'n, 344 Ark. 274, 282 (2001) (recognizing that an "independent judiciary is essential for our society" and that the "judiciary cannot function without the trust and confidence of the public in the integrity and independence of its judges.")

21. The United States Supreme Court precedents applying the First Amendment to political elections have little bearing on the issues that were faced in Williams-Yulee, and the issues faced here. In Williams-Yulee, the United States Supreme Court stated that the “concept of public confidence in judicial integrity does not easily

reduce to precise definition, nor does it lend itself to proof by documentary record.”

Williams-Yulee, 135 S. Ct. at 1667. The Court further stated:

The importance of public confidence in the integrity of judges stems from the place of the judiciary in the government. Unlike the executive or the legislature, the judiciary “has no influence over either the sword or the purse; . . . neither force nor will but merely judgment.” The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered). The judiciary’s authority therefore depends in large measure on the public’s willingness to respect and follow its decisions. As Justice Frankfurter once put it for the Court, “justice must satisfy the appearance of justice.” Offutt v. United States, 348 U.S. 11, 14 (1954). It follows that public perception of judicial integrity is “a state interest of the highest order.” Caperton v. A.T. Massey Coal Co., 556 U. S. 868, 889(2009) (quoting Republican Party v. White, 536 U.S. 765, 793 (2002) (Kennedy, J., concurring)).

Id. 135 S. Ct. at 1666. Simply put, States may regulate judicial elections differently than they regulate political elections, and they have a compelling state interest in doing so.

Williams-Yulee, 135 S.Ct. at 1667.

22. It is expected that much of any response received will be devoted to the position that prior restraints are unconstitutional and will remind this Court that strict scrutiny is required. However, while “it is the rare case” in which a State demonstrates that a speech restriction is narrowly tailored to serve a compelling interest, those cases do arise as they do here. Further, the notion that strict scrutiny is “strict in theory, but fatal in fact” has been dispelled. See Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 237 (1995) (cited with approval by Williams-Yulee, 135 S. Ct. at 1666). In Williams-Yulee, the Supreme Court held that the rule preventing a judicial candidate from personally soliciting campaign contributions withstood strict scrutiny because the rule advanced the State’s compelling interest in preserving public confidence in the integrity of the judiciary, and it did so through means narrowly tailored to avoid unnecessarily abridging speech.

Williams-Yulee, 135 S. Ct. at 1665-1666.

23. Justice Courtney Goodson has acted ethically and responsibly at all times in her service as an Associate Justice of the Arkansas Supreme Court. Justice Goodson has always recused from participating in any cases involving 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 Foods, and the University of Arkansas Board of Trustees. Attached as **Exhibit F** contains a summary of all cases in which Justice Goodson has recused. Certified copies of each of these recusals have been produced in the May litigation before Judge Piazza and will be produced again.

24. The Judicial Discipline and Disability Commission previously addressed the false allegations repeated by RSLC-JFI 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.” A copy of such conclusion is attached as **Exhibit G**.

25. With respect to defamatory statement that Justice Courtney Goodson requested a pay raise of \$18,000.00, 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/IC>

[C Meeting 051617.MP3](#) beginning at minute 12:07.

26. A copy of the minutes from that session is attached as **Exhibit H** and accessible at the following website address:

<http://citizenscommission.ar.gov/Websites/citizenscommission/files/Content/4855643/D>

[RAFT AGENDA for 051617.docx](#)

27. Due to the Defendant's reckless disregard for the truth and its continued publication of false and misleading judicial advertising, CGC brings this Complaint and Request for Preliminary Injunction motion pursuant to Rule 65 of the Arkansas Rules of Civil Procedure and under the laws of the State of Arkansas.

28. As evidenced by the attached letter from the Defendant to the RSLC-JFI, Defendant is 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. The irreparable harm is also to the voters and citizens of the State of Arkansas and the independence of the judiciary as a whole.

29. Rule 65(a) 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 that this matter be advanced on the docket due to the election on November 6, 2018. 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 and because such injunction does not impinge on any ongoing business enterprise.

30. 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).

31. 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).

32. 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).

33. CGC will suffer irreparable harm if immediate injunctive relief is not granted and if RSLC-JFI continues to communicate its 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 November 6, 2018. There is no provision in the law for the vacation of an election result because of defamatory, false and misleading advertising run by or on behalf of a candidate.

34. This is the fourth election where dark money, i.e. money spent either for or against a candidate by entities whose donors cannot readily be determined, 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 in 2014, Justice Womack and Chief Justice Kemp in 2016. See **Exhibit I**.

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

36. In 2016, similar dark money ads were run against Justice Goodson in her bid for Chief Justice of the Arkansas Supreme Court. Her opponent received 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 of the type being run by the Defendants has caused and are causing irreparable harm to both the Plaintiffs and the independence of the judiciary as a whole.

37. The balance between the foregoing irreparable harm to the Plaintiffs, the citizens of the State of Arkansas, and the independence of the judiciary and any injury that may be suffered by Defendant 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.

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

39. The Court should exercise its sound discretion and issue a preliminary injunction enjoining Defendant's conduct. Such Motion for Preliminary Injunction should be set for hearing at the earliest possible time, taking precedence over all other matters.

40. A position on the Arkansas Supreme Court is not for sale by the highest bidder.

41. The judicial branch, unlike the legislative and executive branches, has only its judgment. When the citizens of the State of Arkansas and judicial candidates are faced with round-the clock-ads by those with the most money to spend and media that look the other way, it is only our State, its citizens, and our judiciary that suffer. The Magna Carta proclaims, “To no one will we sell, to no one will we refuse or delay, right or justice.” Without hyperbole and with the evidence supported by this Complaint, all must be concerned about the future for judicial independence and the public’s confidence in its integrity if this complaint is denied.

42. Damages do not exceed the amount for federal diversity jurisdiction. Plaintiffs requests a trial by jury on the merits.

WHEREFORE, Plaintiffs, Courtney Goodson and Courtney Goodson Campaign, hereby request that the Court issue a preliminary injunction ordering RSLC-JFI to cease publishing and communicating its 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 November 6, 2018; demands a jury trial on the merits of the action; requests damages; and for all other relief to which the Plaintiffs are entitled.

Respectfully submitted,

**COURTNEY GOODSON AND COURTNEY GOODSON  
CAMPAIGN**

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By:

Lauren Hoover #2006159

A handwritten signature in blue ink, appearing to read 'Lauren Hoover', is written over the printed name and ID number.