

Brent O. Hatch (5715)
Tyler V. Snow (12668)
HATCH LAW GROUP PC
22 East 100 South, Suite 400
Salt Lake City, UT 84111
Telephone: (801) 869-1919
hatch@hatchpc.com
snow@hatchpc.com

Counsel for Defendant Club For Growth Action

**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

MCMULLIN FOR UTAH INC., a Utah non-profit corporation; and EVAN MCMULLIN, an individual,

Plaintiffs,

vs.

CLUB FOR GROWTH ACTION, a Washington, D.C. political action committee; SCRIPPS MEDIA, INC. dba KSTU-TV dba FOX 13 dba FOX 13 NOW, a Delaware corporation; NEXSTAR MEDIA INC. dba KTVX dba KTVX-TV dba ABC 4, a Delaware corporation; SINCLAIR TELEVISION GROUP, INC. dba KUTV dba KUTV 2, a Maryland corporation, and DOES 1–10;

Defendants.

**RULE 20 MOTION TO SEVER
PROCEEDINGS INVOLVING
TELEVISION STATION
DEFENDANTS AND TO
ACCELERATE PROCEEDINGS
INVOLVING CLUB FOR
GROWTH ACTION**

Civil No. 220905973

Judge Randall Skanchy

Pursuant to Utah Rule of Civil Procedure 20(b), Defendant Club For Growth Action (“CFGa”), by and through counsel, moves to have the Complaint against CFGa severed from the Complaint against Defendants Scripps Media, Inc. dba KSTU-TV dba FOX 13 dba FOX 13 NOW, a Delaware corporation; Nexstar Media Inc. dba KTVX dba KTVX-TV dba ABC 4, a Delaware corporation; and Sinclair Television Group, Inc. dba KUTV dba KUTV 2 (collectively the “Television Stations”), and to accelerate proceedings involving CFGa. Because Plaintiff McMullin’s claims involving the Television Stations raise separate issues from those involving CFGa and will delay resolution of the main claims in this case, the Court should sever those defendants. Because McMullin’s claims concerning CFGa involve important issues connected with the November 8, 2022, election, the Court should accelerate a resolution of the CFGa claims by immediately ordering a scheduling conference to bring the case to a rapid conclusion.

The Court Should Sever McMullin’s Claims Against the Television Stations.

It is clear from the Complaint that claims against the Television Stations are even more untenable on their face than the dubious claims against CFGa. The claims against the Television Stations raise various First Amendment and free press issues not presented by the claims against CFGa. For example, Utah Constitution, article I, section 15, provides that “[n]o law shall be passed to abridge or restrain the freedom ... of the press.” As our Supreme Court has explained, “By its terms, this provision limits the availability of a defamation action where maintaining it would ‘abridge or restrain’ a free press.” *West v. Thomson Newspapers*, 872 P.2d 999, 1014 (Utah 1994). And, of course, the First Amendment to the U.S. Constitution provides similar robust protections for media publishing political advertising. *See, e.g., New York Times v. Sullivan*, 376 U.S. 254, 266 (1964) (extending First Amendment protect to paid political advertising because “[a]ny other

conclusion would discourage newspapers from carrying ‘editorial advertisements’ of this type, and so might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities”).

It is clear the Television Stations will move to dismiss the Complaint against them and will almost certainly succeed. But Plaintiff McMullin does not appear to intend to move the case against the Stations to a rapid conclusion, as he has not sought expedited treatment of his claims. Additionally, despite immediately going to the press and airing his own commercial advertisement about the issues in this lawsuit, McMullin has not even served his complaint against CFGA. This raises the suspicion that McMullin’s intent is to threaten litigation for the illegitimate purpose of discouraging media companies from accepting political advertising against him. In any event, keeping McMullin’s media claims consolidated with his claims against CFGA is prejudicial to CFGA, because consolidation will impede the ability of this Court to accelerate proceedings in this matter.

Under Utah R. Civ. P. 20(b), this Court “may make such orders as will prevent a party from being ... delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.” Here, CFGA asserts no claims against the Television Stations; and they have asserted no claims against CFGA. The Court should exercise its power under Rule 20(b) to sever the claims against the Television Stations, thereby permitting CFGA to move rapidly to resolve the claims against it. CFGA intends to begin discovery and move rapidly to show that Plaintiffs’ claims are invalid.

As noted above, Rule 20(b) authorizes the Court to make such “other orders” as will “prevent delay or prejudice.” This authority is reinforced in Rule 1, which provide that the rules “shall be liberally construed and applied to achieve the just, speedy, and inexpensive determination of every action.” Utah R. Civ. P. 1.

CFGA is entitled to pursue this matter expeditiously. And Plaintiff McMullin can hardly claim to be prejudiced by an accelerated schedule in this case. McMullin professes in his motion to want to draw a “clear line in the sand” by “demanding honest political discourse.” Complaint at 2. But that line is only relevant before the voters of this state have an opportunity to vote—i.e., before Tuesday, November 8.

For reasons that are unclear, McMullin does not appear to want to have his claims litigated quickly. While CFGA is easy to locate, McMullin has not served his complaint on it. Instead, it is CFGA that has answered the complaint, even before service. And—again for reasons that are unclear—McMullin has not sought a temporary restraining order against CFGA regarding the advertisement in question. This raises the suspicion that McMullin is using his (unserved) lawsuit as essentially a campaign press release¹—all without having to prove his claims in court.

This Court should use its power under Utah R. Civ. P. 20(b) and Utah R. Civ. P. 1 to sever the Television Stations from this matter and allow CFGA to move forward expeditiously with discovery to the greatest extent possible.

¹ While he did not serve his complaint on CFGA, McMullin appears to have quickly provided a copy to leading media sources in Utah. *See, e.g.*, Evan McMullin campaign sues Club for Growth and several Utah TV stations for ‘deceptive’ attack ad in U.S. Senate race, S.L. Trib. (Oct. 4, 2022), available at <https://www.sltrib.com/news/politics/2022/10/04/evan-mcmullin-campaign-sues-club/>; Dennis Romboy, Evan McMullin sues Club for Growth, Utah TV stations over attack ad, Deseret News (Oct. 5, 2022), available at <https://www.deseret.com/utah/2022/10/4/23387738/evan-mcmullin-lawsuit-club-for-growth-attack-ad-mike-lee-senate-race>.

CFGa is concerned that despite McMullin's purported desire to resolve this matter, he will slow-walk discovery and try to thwart his deposition. Therefore, CFGa respectfully suggests that the Court consider setting an early scheduling conference to address expedited discovery issues.

Conclusion

Under Rules 20(b) and 1 of the Utah Rules of Civil Procedure, the Court should sever the claims against the Television Stations, allow discovery to proceed expeditiously, and immediately hold a scheduling conference.

RESPECTFULLY SUBMITTED this 7th day of October, 2022.

/s/ Brent O. Hatch

Brent O. Hatch (5715)
Tyler V. Snow (12668)
HATCH LAW GROUP PC
Counsel for Club For Growth Action

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of October, 2022, I caused a true and correct copy of the foregoing to be electronically filed via the Court's e-filing system, GreenFiling, which sends notification of same and effectuated service on all counsel of record. Copies were also provided to the other Defendants as by email to the following:

SCRIPPS MEDIA INC.

Bill Appleton
Executive Vice President and
General Counsel
Scripps Center
312 Walnut St., Suite 2800
Cincinnati, OH 45202
appleton@scripps.com

Tim Ermish
General Manager
5020 West Amelia Earhart
Drive
Salt Lake City, UT 84116
Tim.ermish@fox13now.com

NEXSTAR MEDIA INC.

Elizabeth Ryder
Special Counsel & Secretary
545 E John Carpenter Fwy,
Suite 700
Irving, TX 75062
eryder@nexstar.tv

Mark Danielson
VP & General Manager
2175 West 1700 South
Salt Lake City, UT 84104
mdanielson@abc4.com

SINCLAIR TELEVISION GROUP, INC.

Allison C. Staley
Assistant General Counsel
Sinclair Broadcast Group
10706 Beaver Dam Road
Hunt Valley, MD 21030
410-568-1544
astaley@sbgvtv.com

/s/ Tyler V. Snow _____