

Ryan B. Bell (9956)
Robert P. Harrington (12541)
Shelby Jaye Hughes (16690)
KUNZLER BEAN & ADAMSON, PC
50 W. Broadway, 10th Floor
Salt Lake City, Utah 84101
Telephone: (801) 994-4646
Facsimile: (801) 758-7436
rbell@kba.law
rharrington@kba.law
shughes@kba.law

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Attorneys for Plaintiffs McMullin for Utah Inc. and Evan McMullin

**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,

v.

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.

COMPLAINT

(JURY DEMANDED)

Case No.: _____

Judge: _____

TIER 3

Plaintiffs McMullin for Utah Inc. (“The McMullin Campaign”) and Evan McMullin (“Mr. McMullin”) (collectively, “Plaintiffs”), by and through their above counsel of record, hereby complain and allege against Defendants CLUB FOR GROWTH ACTION, a Washington, D.C. political action committee (“Club for Grown Action”); SCRIPPS MEDIA, INC. dba KSTU-TV dba FOX 13 dba FOX 13 NOW, a Delaware corporation (collectively, “FOX 13”); NEXSTAR MEDIA INC. dba KTVX dba KTVX-TV dba ABC 4, a Delaware corporation (collectively, “ABC 4”); SINCLAIR TELEVISION GROUP, INC. dba KUTV dba KUTV 2, a Maryland corporation (collectively, “KUTV 2”); and DOES 1–10, (collectively, “Defendants”) as follows:

INTRODUCTORY STATEMENT

The instant suit seeks damages for egregious, damaging dishonesty in the context of a political campaign. While all who practice in politics understand it is not a gentle profession, factual distortions that threaten the interest of the public in fair elections, and that wrongfully slander hard-won reputations, cross the line.

An advertisement currently running on three of Utah’s local television affiliates threatens the ability of the voters of this State to make an informed decision as they prepare to vote in this year’s general election. The advertisement created by Defendant Club for Growth Action, an out-of-state independent expenditure-only political action committee (commonly referred to as a “Super PAC”), and broadcast by Fox 13, ABC 4, and KUTV 2, distorts old footage and audio to make it sound like Plaintiff Mr. McMullin accused all Republicans of being racists and bigots. Mr. McMullin never said this. On the contrary, his public work has been centered on earning the trust of Republicans and conservatives in this State and throughout the country. Mr. McMullin

does not hold to the sentiment wrongfully put in his mouth by Defendants and did not ever express that view. Yet, Defendants' doctored ad continues to saturate the Utah television market, distorting his position and damaging him politically, professionally, and personally.

The advertisement being repeatedly beamed into living rooms across Utah in this final month before an important federal election—and one of the closest U.S. Senate races in decades—threatens to upend the fair discourse to which Utahns are accustomed and entitled. It will deepen political rancor and manipulate voter decisions, based entirely on a lie. Furthermore, the advertisement has caused and will cause substantial damage to Mr. McMullin and to his campaign, threatening his chances to compete fairly in the November election and harming Utah voters who deserve to select their next United States Senator equipped with truthful information. Club for Growth Action, specifically, is a repeat player in this space. And the broadcast stations named in this Complaint should hold themselves to a higher standard so as not to cheapen Utah's public discourse. Compared with these Defendants, the prompt decision of another Utah TV station to cancel the improper ad poses a damning contrast.

Failure to draw a clear line in the sand by demanding honest political discourse may only serve to embolden such unscrupulous actors, for which Utah and the nation will pay the price. The maker of this fraudulent ad, and those who continue to broadcast it for substantial financial gain, should be held accountable by the Court, remit damages to Plaintiffs, and be enjoined from continuing such unlawful activity.

PARTIES

1. McMullin for Utah Inc. is a Utah non-profit corporation with its principal place of business in Murray, Utah and is the principal campaign committee of Evan McMullin as a candidate for the United States Senate. It is registered with the Federal Election Commission.

2. Mr. McMullin is an adult individual residing in Highland, Utah.

3. Upon information and belief, Defendant Club for Growth Action is a Washington, D.C. Super PAC with its principal place of business in Washington, D.C. Upon information and belief, Defendant Club for Growth Action has not registered to transact business within the State of Utah, nor has it listed a registered agent within the State of Utah.

4. Upon information and belief, Defendant Fox 13 is or is controlled by Defendant Scripps Media, Inc., a Delaware corporation with its principal place of business in Cincinnati, Ohio.

5. Upon information and belief, Defendant ABC 4 is or is controlled by Defendant Nexstar Media Inc., a Delaware corporation with its principal place of business in Irving, Texas.

6. Upon information and belief, Defendant KUTV 2 is or is controlled by Defendant Sinclair Television Group, Inc., a Maryland Corporation with its principal place of business in Maryland.

7. Defendants Fox 13, ABC 4, and KUTV 2 are all broadcasters who operate television stations in Utah. They are collectively referred to herein as the Broadcaster Defendants.

8. Upon information and belief, DOES 1–10 are individuals or entities who are yet to be discovered by Plaintiffs, but are liable to Plaintiffs in connection with the allegations herein.

JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to Utah Code Ann. §§ 78A–5–102 and 78B–3–205.

10. Defendant Club for Growth Action is subject to personal jurisdiction in this state based on its purposeful availment of the forum for purposes of broadcasting its defamatory advertisement in this state, the effects of which are felt here, and which effects were foreseeable and intended by the Defendant.

11. The Broadcaster Defendants are subject to general personal jurisdiction in this state by virtue of their longstanding operation of television stations in the forum.

12. Because this is a civil action for defamation, false light, and injunctive relief brought by a Plaintiff who resides in Salt Lake County, venue is proper pursuant to Utah Code Ann. §§ 78B–3–306, 307.

13. Pursuant to the Utah Rules of Civil Procedure, Plaintiffs file this Complaint as a Tier 3 Complaint.

FACTUAL ALLEGATIONS

14. Mr. McMullin is a prominent figure with an impressive record of service to the United States.

15. Mr. McMullin served honorably in the CIA for over a decade, most of which was spent undercover overseas as an operations officer carrying out counterterrorism operations in the wake of 9/11.

16. He then worked for Congress as a senior adviser on national security issues for the House Committee on Foreign Affairs, before becoming the Chief Policy Director of the House Republican Conference.

17. Mr. McMullin briefly ran for President in the 2016 presidential election. His upstart candidacy garnered 21.5% of the vote in Utah, signaling a substantial level of name recognition and positive feelings among Utahns.

18. Via his presidential run, and his subsequent policy and public outreach work, Mr. McMullin became a prominent voice within Republican politics. He became known for his assertive but respectful calls to restore integrity and public-mindedness to the party.

The Ongoing Senate Race

19. Mr. McMullin is now a candidate for the United States Senate running in the State of Utah as an independent.

20. Mr. McMullin is challenging long-time incumbent Senator Mike Lee.

21. The election for this race will be held on November 8, 2022.

22. Per various press reports, the race has reached a critical period in which the two candidates are running neck-and-neck, with approximately five weeks remaining in the campaign.¹

¹ Robert Gehrke, How close is the U.S. Senate race between Evan McMullin and Mike Lee?, Sept. 30, 2022, SALT LAKE TRIBUNE, <https://www.sltrib.com/opinion/2022/09/30/how-close-is->

23. Media reports suggest that as of the date of this filing, there is an unusually large number of voters who remain undecided between the two candidates.²

24. Mr. McMullin's strong showing in a race in which he began as a decided underdog, and has been substantially outspent, offers significant indication of the substantial value of his public reputation in Utah.

The Defamatory Advertisement

25. On or around September 29, 2022, Club for Growth Action launched an advertisement focusing on Mr. McMullin. The ad can be viewed on the group's website as of today, introduced by a statement by the group's president stating that, "Evan McMullin showed his true colors by calling the Republican Party racists."

26. At the same time, the Broadcaster Defendants began to broadcast the advertisement, paid for by Club for Growth Action (the "Ad").

27. The Ad uses video of Mr. McMullin's face and doctored audio of his voice, in which he is portrayed as making the statement, "The Republican base is racist. These bigots!" (the "False Quotation").

28. This audio has been doctored to give the false impression to viewers that Mr. McMullin has condemned the broad base of the Republican Party as racists.

[us-senate-race/](#) (last visited October 4, 2022); Dennis Romboy, How tight is the Mike Lee-Evan McMullin race for Senate, Sept. 22, 2022, DESERET NEWS, <https://www.deseret.com/utah/2022/9/22/23351744/mike-lee-evan-mcmullin-poll-results-senate-election-utah> (last visited October 4, 2022).

² Gehrke, cited *supra.*; Frank Pignanelli and LaVarr Webb, Opinion: Can we trust the polling in Utah's U.S. Senate Race?, Sept. 30, 2022, DESERET NEWS, <https://www.deseret.com/opinion/2022/9/30/23375076/opinion-polling-accuracy-senate-race-lee-mcmullin> (last visited October 4, 2022).

29. Mr. McMullin did not make the statement portrayed in the False Quotation.

30. The Ad then features three women discussing their impressions of Mr. McMullin, as if commenting on the False Quotation played previously.

31. During the Ad, the women appear to watch the False Quotation, and one of them grimaces, as if hearing the broad condemnation played in the False Quotation.

32. The woman is then shown saying, “What Evan McMullin says – that doesn’t feel kind. He’s derogatory toward a huge group of people.”

33. This statement gives the continuing false impression that Mr. McMullin had condemned the Republican Party and its broad base as racists, and misleadingly invites viewers to draw the same conclusions about Mr. McMullin.

34. Two other women then comment, again, giving the impression that their conclusions arise in reaction to the False Quotation, as if it were a real statement made by Mr. McMullin.

35. On information and belief, the Ad has been played dozens of times by the Broadcaster Defendants to audiences numbering in the hundreds of thousands of people.

36. On information and belief, the Broadcaster Defendants will continue to broadcast the Ad dozens more times over the coming days and potentially weeks.

The 2017 News Segment

37. The words spliced together to create the False Quotation appear to have been drawn from the audio of a news segment in which Mr. McMullin participated in 2017 (the “News Segment”).³

38. The News Segment involved a panel of several people commenting on the tragic events that had recently taken place in Charlottesville, Virginia, when demonstrators marched through the city carrying confederate and Nazi flags and symbols and chanting Nazi slogans.

39. The rally in Charlottesville led to the death of one woman, who was purposely run over by a car during the gathering and ensuing chaos.

40. A national conversation arose around these events, which appeared driven by nationalistic and racial fervor among some far-right groups.

41. In the News Segment that followed in August 2017, Mr. McMullin was discussing these events and the national reaction to them, along with a number of other commentators.

42. Mr. McMullin used this platform to speak about some members of the Republican Party, referring to “elements within the party” that attack party leaders for anti-racist statements.

43. In the key section of his remarks, Mr. McMullin stated as follows:

Not all Republicans of course are racist. I was raised by Republicans, who are not at all, and we welcome Americans of all backgrounds and are not at all like this... but there is an element of the Republican base that is racist. And our leaders are afraid to stand up to them because, if they do so, they’ll be criticized, and they’ll potentially lose votes.

³ YouTube Link: <https://www.youtube.com/watch?v=2dYVhy2r9kA> (last visited October 4, 2022).

44. Mr. McMullin later went on to say that “[w]e need leaders especially on the Republican and conservative side these days who will serve the country. And serving the country means standing up to these bigots.”

45. At no time during the News Segment did Mr. McMullin say that the “Republican base is racist.”

46. That Mr. McMullin did not say the words used in the False Quotation is obvious to any person willing to review a copy of the News Segment. The obvious meaning of Mr. McMullin’s remarks therein was that there is a distinct “element” of the Republican base that is racist, not that the base itself is so. This distinction between the views held by Republicans more broadly and certain fringe “elements” of the Republican Party that harbor bigoted views is important to Mr. McMullin professionally, personally, and politically, and Mr. McMullin seeks to appeal to and represent those members of the Republican Party who, like him, believe that racist views and actions are abhorrent.

Defendants’ Actual Malice

47. As described above, the Ad contains statements that are false.

48. The Ad is also defamatory, as the notion that Mr. McMullin believes that the Republican Party base is generally racist and bigoted would subject him to significant public opprobrium among the conservative people with whom he has built mutual trust and respect over a decade of his public work. Indeed, the feigned reactions of the women appearing in the Ad signal the disgusted reactions Club for Growth Action hopes to provoke among Utah voters.

49. Each Defendant created or transmitted the Ad with knowledge that it was false or with reckless disregard as to its falsity.

50. Club For Growth Action or its agents created the Ad, thereby doctoring the footage and audio of the News Segment to remove explanatory context and the order of the words Mr. McMullin spoke.

51. They did so with the specific intention of distorting his words into a statement that he never said and never meant to convey.

52. Fox 13 also acted with knowledge of the falsity of the Ad, or with reckless disregard of its falsity.

53. Fox 13 has published stories on its website and run news segments on its station noting the precise details of the Ad and the way in which it distorts Mr. McMullin's words from the News Segment.⁴ This is a clear acknowledgement of Fox 13's awareness of the problems with the Ad.

54. In its news segment, Fox 13's host acknowledges that Fox 13 has received numerous comments on the Ad, telling his audience that "many of you have called us and emailed us about the Ad."

55. Despite its news story acknowledging the distortion of Mr. McMullin's words, Fox 13 has continued to run the Ad numerous times, without including the explanatory context featured in its ephemeral news piece.

56. Various other news stories have noted the dishonest and false nature of the Ad.⁵

⁴ Mythili Gubbi, Controversy surrounds attack ad targeting Evan McMullin, Sept. 30, 2022, Fox 13 Now, <https://www.fox13now.com/news/politics/controversy-surrounds-attack-ad-targeting-evan-mcmullin> (last visited October 3, 2022).

⁵ See, e.g., Daniel Dale, Fact check: Ad deceptively edits politician's comments to suggest he called Republicans racist, Oct. 4, 2022, CNN, <https://www.cnn.com/videos/politics/2022/10/04/evan-mcmullin-political-ad-racist-republican->

57. In fact, the falsity of the Ad was so obvious to honest observers that KSL, a local news provider who had initially agreed to carry the Ad, agreed to remove the Ad from its broadcasts due to concerns about its falsity, after being contacted by the McMullin Campaign.⁶

58. Beginning on September 29, the McMullin Campaign communicated with a Fox 13 representative explaining the falsity of the Ad and the deceptive impact it was likely to have on the Utah electorate. Although specifically on notice of the falsity of the Ad, Fox 13 has declined to voluntarily remove the Ad from its television channel.

59. Beginning on September 29, the McMullin Campaign communicated with an ABC 4 representative explaining the falsity of the Ad and the deceptive impact it was likely to have on the Utah electorate. Although specifically on notice of the falsity of the Ad, ABC 4 has declined to voluntarily remove the Ad from its television channel.

60. Beginning on September 29, the McMullin Campaign communicated with a KUTV 2 representative explaining the falsity of the Ad and the deceptive impact it was likely to have on the Utah electorate. Although specifically on notice of the falsity of the Ad, KUTV 2 had declined to voluntarily remove the Ad from its television channel.

61. The refusal of the Broadcaster Defendants to remove the Ad, though on notice of its falsity and after the expiration of the retraction period provided under Utah law, is evidence of their malice in continuing to broadcast the Ad.

fact-check-orig-mh.cnn (last visited October 4, 2022); Gerhke, cited *supra* at 5; Patrick Benedict, KSL pulls out-of-state ad targeting Evan McMullin, Sept. 29, 2022, GEPHARDT DAILY, <https://gephardtaily.com/local/ksl-pulls-out-of-state-ad-targeting-evan-mcmullin-re-editing-of-old-interview-factual-nature-of-content-raises-concerns/> (Noting that Ad “was not only edited, but also was taken completely out of context.”) (last visited October 3, 2022).

⁶ *Id.* (Patrick Benedict)

Plaintiffs' Damages

62. Mr. McMullin's reputation among Utahns is critical to his campaign chances.

63. Club for Growth Action's purposeful timing of the Ad is meant to cause maximum damage to Mr. McMullin's reputation among Utah's Republicans and conservatives.

64. The Broadcaster Defendants understand the crucial timing of the Ad, and the way it seeks to manipulate Utah's electorate against voting for Mr. McMullin based on false pretenses.

65. The Ad has caused, and continues to cause, substantial damage to Plaintiffs' reputations.

66. The McMullin Campaign is suffering financial harm in the amounts it has now been required to spend on corrective advertising, reputation management, and additional activities necessary to repair damage wrongfully caused by the Ad.

67. Mr. McMullin has also suffered, and will suffer, substantial economic losses as a result of the Ad, relating to the loss of reputation, risks to employment, and frayed relationships that it has caused.

FIRST CAUSE OF ACTION (Defamation - All Defendants)

68. Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 67 of their Complaint as if fully set forth herein.

69. Defendant Club for Growth Action has made defamatory statements about Plaintiffs to the Utah electorate, including the false portrayal of Mr. McMullin as having stated on television that, "The Republican base is racist. These bigots!"

70. Club for Growth Action's Ad further characterizes individuals appearing in the Ad as having heard Mr. McMullin make this statement.

71. Broadcaster Defendants published, numerous times, to hundreds of thousands of people in Utah, the False Quotation and the false context and characterizations surrounding it in the Ad.

72. The Ad and its various implications regarding Plaintiffs are false.

73. The false message of the Ad is defamatory, in that it exposes Plaintiffs to public contempt, especially within the relevant voters which Plaintiffs have invested enormous time and effort to persuade.

74. All Defendants have acted with knowledge of the falsity of the Ad, or with reckless disregard of its truthfulness, as set forth above.

75. Defendants have continued to broadcast the Ad despite public outcry, publicized observations of its mendacity, and contacts by Plaintiffs pointing out its dishonesty.

76. The serial and ongoing publication of the Ad is causing, and will continue to cause, enormous injuries to Mr. McMullin and the McMullin Campaign, as set forth above.

77. As a result, Plaintiffs have incurred damages in an amount that will be determined at a trial in this matter, but in no event less than the threshold amount for a Tier 3 case.

78. Defendants' acts demonstrate willfulness or reckless indifference to Plaintiffs' rights and are so egregious as to warrant punitive damages in support of this cause of action.

SECOND CAUSE OF ACTION
(False Light - All Defendants)

79. Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 78 of their Complaint as if fully set forth herein.

80. Defendant Club for Growth Action has made defamatory statements about Plaintiffs to the Utah electorate, including the false portrayal of Mr. McMullin as having stated on television that, “The Republican base is racist. These bigots!”

81. Club for Growth Action’s Ad further characterizes individuals appearing in the Ad as having heard Mr. McMullin make this statement.

82. Broadcaster Defendants published, numerous times, to hundreds of thousands of people in Utah, the False Quotation and the false context and characterizations surrounding it in the Ad.

83. The Ad and its various mischaracterizations place Plaintiffs before the public in a false light.

84. The false light in which Plaintiffs have been placed is highly offensive, as it portrays Plaintiffs as condemning the Republican Party and its general base of supporters as bigots. Plaintiffs have invested substantial work in building relationships and reputations among Republican and conservative people, especially within the State of Utah.

85. Defendants knowingly or recklessly publicized the Ad without regard for its falsity and without care for the injuries it caused.

86. Defendants have continued to publicize the Ad despite public outcry, publicized observations of its mendacity, and contacts by Plaintiffs pointing out its dishonesty.

87. The serial and ongoing publication of the Ad is causing, and will continue to cause, enormous injuries to Mr. McMullin and the McMullin Campaign, as set forth above.

88. As a result, Plaintiffs have incurred damages in an amount that will be determined at a trial in this matter, but in no event less than the threshold amount for a Tier 3 case.

89. Defendants' acts demonstrate willfulness or reckless indifference to Plaintiffs' rights and are so egregious as to warrant punitive damages in support of this cause of action.

FOURTH CAUSE OF ACTION
(Permanent Injunction – All Defendants)

90. Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 89 of their Complaint as if fully set forth herein.

91. Defendants' actions have caused and are substantially likely to continue to cause irreparable harm to Plaintiffs.

92. Defendants' actions are ongoing and are substantially likely to continue.

93. Plaintiffs' claims are meritorious, and Plaintiffs should prevail on their above causes of action.

94. The balance of harms between the parties strongly favors entry of an injunction against Defendants.

95. Public policy strongly favors entry of an injunction so as to prevent further falsehoods and additional irreparable injuries to Plaintiffs.

96. Accordingly, Plaintiffs are entitled to a permanent injunction restraining Defendants from making disparaging statements regarding Plaintiffs in any medium or forum.

JURY DEMAND

Plaintiffs respectfully demand a trial by jury of any issue so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

1. That judgment be entered in favor of Plaintiffs;

2. That Plaintiffs be awarded compensatory damages for costs and damages incurred as a result of the above-described actions in an amount to be determined at trial, but not less than the threshold amount for a Tier 3 case;

3. That Plaintiffs be awarded a permanent injunction against Defendants restraining them from further publishing the Ad or any statement similar to the False Quotation.

4. That Plaintiffs be awarded post-judgment interest at the highest amount permitted by law;

5. That Plaintiffs be awarded their costs and fees associated with bringing this case;

6. That Plaintiffs be awarded punitive damages, as allowed by law, for Defendants' intentionally tortious conduct and reckless indifference for Plaintiffs' rights as may be determined at trial; and

7. That the Court grant such other relief as it may deem just and proper.

DATED: October 4, 2022.

Respectfully submitted,

KUNZLER BEAN & ADAMSON, PC

/s/ Ryan B. Bell _____

Ryan B. Bell

Robert P. Harrington

Shelby Jaye Hughes

*Attorneys for Plaintiffs McMullin for Utah Inc.
and Evan McMullin*