

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.

**ANSWER OF CLUB FOR
GROWTH ACTION TO
COMPLAINT**

Civil No. 220905973

Judge Randall Skanchy

Defendant Club for Growth Action (“CFGAs”) answers the Complaint of Plaintiffs Evan McMullin (“McMullin”) and McMullin for Utah Inc. (collectively “Plaintiffs”) as follows:

INTRODUCTORY STATEMENT¹

Plaintiffs' so-called "Introductory Statement" is largely a political statement by McMullin seeking to mislead voters in Utah that he did not make statements that he actually did make. This suit does involve "egregious, damaging dishonesty in the context of political campaign," as stated in the Complaint, but the dishonesty is that of Plaintiff Evan McMullin. For crass political gain, McMullin has been for some time calling members of the Republican Party "racists" in an apparent effort to breathe life into his moribund campaign. Politicians often go to great lengths to hide their prior statements. So, when CFGA called him out on this, McMullin filed this suit to give the appearance that what CFGA said was not true. McMullin also promoted his feigned outrage with the press and within a day had a new television commercial to capitalize on his bogus lawsuit against CFGA. McMullin even claimed advertisements against him were appearing because "I won't take their money," implying, falsely that it had been offered – it had not. The McMullin campaign apparently has an ongoing struggle with the truth.

McMullin complains that an advertisement paid for by CFGA, using McMullin's own words calling Republicans "racists," is somehow inaccurate. In fact, McMullin at paragraph 43 of his Complaint admits that he stated "there is an element of the Republican base that is racist." He is clearly calling Republicans "racists" but quibbles over the word "element" as though that somehow materially changes his message – it does not. In his Complaint McMullin complains about the advertisement in question because it removes the extraneous word "that" from McMullin's own remarks on live national television. Such an objection is not only legally

¹ Plaintiffs' "Introductory Statement" is not a statement of facts to which an answer is required. To the extent an answer is required, CFGA denies the allegations in Plaintiffs' Introductory Statement.

baseless, but particularly surprising given that McMullin routinely relies upon brackets and ellipses to revise quotes when making his own political points.

It is well-settled in Utah that “truth is an absolute defense to an action for defamation.” *Brehany v. Nordstrom, Inc.*, 812 P.2d 49, 57 (Utah 1991). And the “defense of truth is sufficiently established if the defamatory charge is true in substance. Insignificant inaccuracies of expression do not defeat the defense of truth.” *Id.*

Against this backdrop, McMullin’s complaint must be rejected because CFGA’s statements are true—an absolute defense. Indeed, if anything, CFGA has *understated* McMullin’s attacks on Republicans. For instance, CFGA could have used even more inflammatory quotes from McMullin about Republicans. For example:

“The GOP is sick. It invited racist parasites into Lincoln's party years ago and they've sucked the values and patriotism from its body.” ([Evan McMullin Twitter](#), 6/28/2020)

McMullin apparently wants to water down his past criticism of the Republican Party. But his incessant disparagement of the Republican Party’s base is voluminous and well-documented, and the advertisement’s language fairly encapsulates the substance of McMullin’s prior statements. McMullin neglects to mention that he has been repeatedly promoting his Republicans-as-racists canard for political gain for some time well beyond the referenced CNN interview in the advertisement at issue. Similar quotations from McMullin on precisely the same topic as that complained of in the advertisement are legion. For example:

“[T]he bottom line was this: McMullin believes the Republican Party is rife with racism. ‘That’s the problem,’ he said simply.” ([Washington Examiner](#), 10/12/2016)

“‘But I do believe there is a problem with racism in the Republican Party.’” ([Deseret News](#), 10/27/2016)

“The Republican Party, particularly as led by Donald Trump, has a problem with racism and sexism, independent presidential candidate Evan McMullin said in a speech Wednesday, vowing he wouldn’t return to the GOP unless it becomes more welcoming to all people.” ([Salt Lake Tribune](#), 11/2/2016)

“[T]he [Republican] party has been overcome by the treacherous cancer of bigotry and it must be defeated until it repents and reforms or dies once and for all.” ([Evan McMullin Twitter](#), 6/28/2020)

McMullin wants the advantages of playing the race card, but is attempting to use the judicial system to hide the odious nature of his game. He cannot run from his own words now simply because they are politically inconvenient, and use of the courts for obvious political purposes is improper. McMullin’s Complaint is a transparent attempt to censor CFGA and Utah television stations. This Court should not countenance such behavior, dismiss McMullin’s baseless lawsuit, and order him to pay the costs and attorney fees incurred by all the Defendants in responding to his abuse of the courts.

PARTIES

CFGA responds to the numbered paragraphs in the Complaint as follows:

1. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.
2. Admit.
3. Admit that CFGA is a Washington, D.C. Super PAC with its principal place of business in Washington, D.C. The remaining allegations are legal conclusions that do not require a response, and to the extent a response is required, they are denied.
4. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

5. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

6. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

7. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

8. Deny.

JURISDICTION AND VENUE

9. Deny.

10. Deny.

11. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

12. Deny.

13. Admit that Plaintiffs filed the Complaint as a Tier 3 Complaint, but deny that it meets the requirement of Tier 3.

FACTUAL ALLEGATIONS

14. Deny.

15. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

16. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

17. Admit McMullin ran for President. Denies the remaining allegations.

18. Deny.

The Ongoing Senate Race

19. Admit.

20. Admit.

21. Admit.

22. Deny.

23. Deny.

24. Deny.

The Defamatory Advertisement²

25. The Website speaks for itself. To the extent a response is required, CFGA denies Plaintiffs' incomplete characterization.

26. Admit.

27. Deny. As McMullin well knows, the voice in the Ad is his.

28. Deny. As McMullin well knows, he actually has repeatedly accused Republicans and the Republican Party of being racists.

29. Deny.

30. The Ad speaks for itself. To the extent a response is required, CFGA denies Plaintiffs' mischaracterization.

31. The Ad speaks for itself. To the extent a response is required, CFGA denies Plaintiffs' mischaracterization.

² CFGA repeats Plaintiffs' headings only for convenience. To the extent that the headings were intended by Plaintiffs as allegations, they are denied.

32. Admit.

33. The Ad speaks for itself. To the extent a response is required, CFGA denies Plaintiffs' mischaracterization.

34. The Ad speaks for itself. To the extent a response is required, CFGA denies Plaintiffs' mischaracterization.

35. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

36. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

The 2017 News Segment

37. The Ad speaks for itself. To the extent a response is required, CFGA denies Plaintiffs' mischaracterization.

38. The News Segment speaks for itself. To the extent a response is required, CFGA denies.

39. The events speak for themselves.

40. The events speak for themselves.

41. The News Segment speaks for itself. To the extent a response is required, CFGA denies.

42. The News Segment speaks for itself. To the extent a response is required, CFGA denies Plaintiffs' mischaracterization.

43. The Ad speaks for itself. To the extent a response is required, CFGA denies.
44. The Ad speaks for itself. To the extent a response is required, CFGA denies.
45. Deny. See Complaint allegation 43.
46. Deny.

Defendants' Actual Malice

47. Deny.
48. Deny.
49. Deny.
50. The Ad speaks for itself. To the extent a response is required, CFGA denies

Plaintiffs' mischaracterization.

51. Deny.
52. Deny.
53. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.
54. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.
55. Deny.
56. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.
57. Deny.
58. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

59. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

60. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

61. Deny.

Plaintiffs' Damages

62. CFGA does not have sufficient knowledge to admit or deny the allegation, and therefore denies the same.

63. Deny.

64. Deny.

65. Deny.

66. Deny.

67. Deny.

FIRST CAUSE OF ACTION

68. CFGA incorporates its responses to paragraphs 1 through 67 here.

69. Deny. McMullin has repeatedly accused Republicans and the Republican Party of being racists.

70. The Ad speaks for itself. To the extent a response is required, CFGA denies Plaintiffs' mischaracterization.

71. Deny.

72. Deny.

73. Deny.

74. Deny.

75. Deny.

76. Deny.

77. Deny.

78. Deny.

SECOND CAUSE OF ACTION

79. CFGA incorporates its responses to paragraphs 1 through 78 here.

80. Deny.

81. The Ad speaks for itself. To the extent a response is required, CFGA denies

Plaintiffs' mischaracterization.

82. Deny.

83. Deny.

84. Deny.

85. Deny.

86. Deny.

87. Deny.

88. Deny.

89. Deny.

FOURTH CAUSE OF ACTION [sic]³ (Permanent Injunction – All Defendants)

90. CFGA incorporates its responses to paragraphs 1 through 89 here.

³ Plaintiffs' complaint did not contain a Third Cause of Action. In an abundance of caution, CFGA denies any allegations that McMullin may have made in the phantom Third Cause of Action.

91. Deny.
92. Deny.
93. Deny.
94. Deny.
95. Deny.
96. Deny.
97. All allegations above not expressly admitted above are denied.
98. CFGA denies that Plaintiff is entitled to any relief as requested in his Prayer for Relief.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief could be granted.
2. Plaintiffs' claims involve CFGA's communications in a public forum in connection with issues of public interest and other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest.
3. Plaintiffs' claims are barred because the statements made by CFGA were non-actionable opinions.
4. Plaintiffs' claims are barred because the statements made by CFGA or its agents (if any) were constitutionally protected opinions under the First Amendment and Article I, Section 15 of the Utah State Constitution.
5. Plaintiffs' claims are barred because the statements made by CFGA or its agents (if any) were non-defamatory statements of fact.

6. Plaintiffs' claims are barred because the statements made by CFGA or its agents (if any) were protected by qualified or conditional privileges.

7. Plaintiffs' claims are barred because he is a public figure and unable to prove that CFGA acted with "actual malice."

8. Plaintiffs' claims are barred because the statements made by CFGA or its agents (if any) were substantially true.

9. Plaintiffs' claims are barred because the statements made by CFGA or its agents (if any) constituted "fair comment."

10. Plaintiffs' claims are barred because, at all times relevant herein, Plaintiff has failed to act in good faith with respect to CFGA.

11. Plaintiffs' claims are barred by the incremental harm doctrine.

12. Plaintiffs' claims are barred because the statements made by CFGA or its agents (if any) cannot realistically have caused impairment to Plaintiffs' reputation.

13. Plaintiffs' alleged damages, if any, are speculative, hypothetical, unsupported by any reasonable methodology, and are not cognizable as a matter of law.

14. Plaintiffs' claims are barred because the statements made by CFGA or its agents (if any) did not cause or contribute to any damages suffered by Plaintiff.

15. To the extent that Plaintiff suffered any injury, because Plaintiff has previously described Republicans as "racist," any statements made by CFGA cannot have caused additional injury to Plaintiff.

16. To the extent Plaintiff suffered an injury, he failed to take reasonable, necessary, appropriate and feasible steps to mitigate his alleged damages, and to the extent of such failure to mitigate, he should be barred from recovering some or all of the alleged damages he seeks.

17. Plaintiffs' damages, if any, are the proximate result of intervening causes, pre-existing medical and mental conditions of Plaintiff, and/or causes that occurred without knowledge or participation of CFGA and for which CFGA is not responsible.

18. Plaintiffs' damages, if any, were the result of his own conduct or the conduct of others and were not proximately caused by any action of CFGA.

19. Plaintiffs' claims are barred, in whole or in part, by the affirmative defenses of waiver, ratification, estoppel, laches, and/or unclean hands.

21. CFGA reserves the right to raise any and all other affirmative defenses it deems proper based on the discovery process or any future development of the case.

JURY DEMAND

CFGA demands a jury trial as to the claims against it and relies on the jury demand fee made by Plaintiffs.

WHEREFORE, on Plaintiffs' complaint, Defendant CFGA demands judgment as follows:

- A. That Plaintiffs take nothing by way of their Complaint;
- B. That the Complaint be dismissed *with prejudice*;
- C. That Judgment be entered in favor of Defendant CFGA and against Plaintiffs;

- D. That CFGA be awarded its costs and fees in this action against Plaintiffs, including under Utah Code Ann. §78B-5-825 as the Complaint is “without merit and not brought or asserted in good faith,” including pre- and post-judgment interest; and
- E. All other such relief as this Court deems just, equitable, and proper.

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 Defendant 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 & Corporate
Secretary
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 _____