

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS  
CIVIL DIVISION

COURTNEY GOODSON and  
COURTNEY GOODSON CAMPAIGN

PLAINTIFFS

v.

CASE NO. 72CV-18-1326

TRIBUNE BROADCASTING FORT SMITH, LLC;  
COX MEDIA, LLC; and NEXSTAR BROADCASTING, INC.

DEFENDANTS

**TRIBUNE BROADCASTING FORT SMITH, LLC'S EMERGENCY MOTION TO  
DISSOLVE TEMPORARY RESTRAINING ORDER AND INCORPORATED BRIEF**

On May 14, the Honorable Doug Martin entered an *ex parte* Temporary Restraining Order completely barring Tribune Broadcasting Fort Smith, LLC ("Tribune"); Cox Media, LLC; and Nextar Broadcasting, Inc. from publishing advertisements produced by the Judicial Crisis Network "pending further orders from this Court." The Court entered the Order *ex parte* despite the fact that plaintiffs made absolutely no attempt to provide any notice to Tribune, a local broadcaster with offices in Washington County. Judge Martin scheduled a preliminary injunction hearing for 9:00 a.m. on May 17, 2018. However, late in the afternoon on May 16, 2018, Judge Martin recused himself from the case, continued the preliminary injunction hearing indefinitely, and referred the case to the Honorable Stacey Zimmerman for reassignment to another division. Despite finding that he should be disqualified from hearing this case and continuing the hearing indefinitely, Judge Martin left his *ex parte* Temporary Restraining Order in place. The motion for disqualification filed by Courtney Goodson and the Courtney Goodson Campaign ("Courtney Goodson") implies that Courtney Goodson was aware of the grounds for disqualification when making the request for an *ex parte* Temporary Restraining Order.

Tribune immediately provided notice to Courtney Goodson that it would appear to move to dissolve the hearing within two days. See May 16, 2018 email to Plaintiffs' Counsel, attached

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WASHINGTON CO. AR  
CIRCUIT CLERK  
K. SYLVESTER

as Exhibit 1 to the Emergency Motion to Vacate and Dissolve; *see also* Tribune's Request for Hearing, attached as Exhibit 2 to the Emergency Motion to Vacate and Dissolve. Tribune also submitted its Request for Hearing to Judge Zimmerman, copying plaintiffs' counsel. Judge Zimmerman promptly responded to Tribune's request and attempted to reassign this case to another judge. Unfortunately, all other judges in Washington County disqualified themselves from hearing this case. Judge Zimmerman then submitted a request to Chief Justice Dan Kemp to assign a special judge pursuant to Administrative Order No. 16, Section 3. *See* Judge Zimmerman's Letter to the Court, attached as Exhibit 3 to the Emergency Motion to Vacate and Dissolve.

The advertisements censored by the *ex parte* Temporary Restraining Order concern Arkansas Supreme Court Justice Courtney Goodson, who is running for reelection to the Arkansas Supreme Court. Early voting for this election began before the Court entered the Order, is ongoing, and the election is scheduled to be held May 22, 2018, less than 14 days after the Temporary Restraining Order was issued. By entering a Temporary Restraining Order *ex parte*, entering an eleventh-hour, indefinite continuance of the only scheduled hearing on the Order, and recusing from the case, the Court has completely banned campaign speech without notice and without providing Tribune, the other media defendants, or anyone interested in free speech with any avenue to be heard in court. This case is an affront to not only the First Amendment, but Due Process. Tribune moves that the special judge appointed by Chief Justice Kemp immediately dissolve and vacate the *ex parte* Temporary Restraining Order and set this case for a hearing as soon as possible. Tribune also reaffirms its right and intention to appear before the Court, whoever the Judge may be, and move to dissolve the *ex parte* Temporary Restraining Order no later than Friday, May 18, 2018 pursuant to Arkansas Rule of Civil Procedure 65(b)(4).



### I. The *Ex Parte* Temporary Restraining Order Is A Prior Restraint

The *ex parte* Temporary Restraining Order completely bars Tribune from publishing campaign advertisements about a public figure without any factual finding that the content of the advertisements is defamatory. It is a prior restraint. *Helena Daily World v. Simes*, 365 Ark. 305, 308, 229 S.W.3d 1, 3 (2006) (internal citation omitted) (“A prior restraint is a governmental restriction on speech or publication before its actual expression. It restricts *potential* speech.”). As such, the *ex parte* Order “suppresses the precise freedom which the First Amendment sought to protect against abridgment.” *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 181 (1968). In fact, “[t]he elimination of prior restraints was a ‘leading purpose’ in the adoption of the First Amendment.” *Id.*, at 181 n.5 (quoting *Lovell v. City of Griffin*, 303 U.S. 444, 451-452 (1938)).

This Court must immediately vacate this prior restraint because of the “basic infirmity in the procedure by which it was obtained.” *Id.*, at 180. The Court issued its order *ex parte*, without any notice to Tribune and without any effort, formally or informally, to permit Tribune to participate in the proceedings. Indeed, with the indefinite continuance of any hearing, and with the recusal of all judges in Washington County, the courthouse doors are literally closed for Tribune to vindicate its First Amendment rights. As Justice Fortas wrote in his seminal opinion on prior restraints:

There is a place in our jurisprudence for *ex parte* issuance, without notice, of temporary restraining orders of short duration; but there is no place within the area of basic freedoms guaranteed by the First Amendment for such orders where no showing is made that it is impossible to serve or to notify the opposing parties and to give them an opportunity to participate.

*Id.*

*Carroll v. President & Comm'rs of Princess Anne* is controlling and this Court must vacate this Order. In *Carroll*, a state trial court entered 10 day, *ex parte* Restraining Order prohibiting political speech without any indication in the record of any attempt to notify the parties to be enjoined of the application for an injunction. *Id.*, at 182. The Supreme Court reversed the state court Order without even reaching the question of whether there was “a constitutionally permissible basis for temporarily enjoining” the speech because it was “clear that the failure to give notice, formal or informal, and to provide an opportunity for an adversary proceeding before the holding of the rally was restrained, is incompatible with the First Amendment.”

For these reasons, this Court must immediately vacate and dissolve the *ex parte* Temporary Restraining Order.

**II. The *Ex Parte* Temporary Restraining Order Does Not Comply With Arkansas Rule of Civil Procedure 65**

Even if the *ex parte* Temporary Restraining Order was not in clear violation of the First Amendment to the United States Constitution, it should be immediately dissolved because it does not comply with the requirements of Arkansas Rule of Civil Procedure 65. The deficiencies include, but are not limited to:

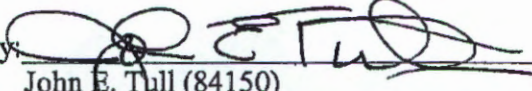
1. The failure to include the hour the Order was issued.
2. The failure to describe plaintiffs' injury and state why it is irreparable.
3. The failure to state why the Order was entered without notice.
4. The failure to state the precise time when the Order expires.

See Ark. R. Civ. P. 65(b)(2); see also 2 David Newbern *et al.*, *Arkansas Civil Prac. & Proc.* § 35:2 (5th ed.). The Court must immediately dissolve the *ex parte* Temporary Restraining Order.



WHEREFORE, Tribune Broadcasting Fort Smith, LLC respectfully requests that the Court immediately vacate and dissolve the unconstitutional, *ex parte* Temporary Restraining Order, set this matter for a hearing at the earliest possible time, and for all other just and proper relief.

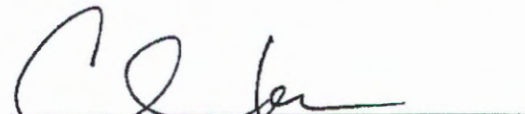
QUATTLEBAUM, GROOMS & TULL PLLC  
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(501) 379-1700  
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By:   
John E. Tull (84150)  
Christoph Keller (2015145)

*Attorneys for Tribune Broadcasting Fort Smith,  
LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that, on May 16, 2018, I delivered a copy of the forgoing by electronic transmission to all counsel of record.

  
Christoph Keller

## Christoph Keller

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**From:** Christoph Keller  
**Sent:** Wednesday, May 16, 2018 5:52 PM  
**To:** 'svowell@taylorlawpartners.com'; 'lhoover@ldhrlaw.com'  
**Cc:** John Tull  
**Subject:** Request for hearing - Goodson v. Tribune, et al.  
**Attachments:** Request for Hearing.pdf

**Importance:** High

Counsel,

John Tull and I represent Tribune Broadcasting Fort Smith, LLC in the case filed in Washington County by Justice Goodson. Please see the attached Request for Hearing. I will email the request to Judge Zimmerman this evening and will copy you on the email.

Thank you,

Christoph Keller

Christoph Keller  
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Valdean Bailey | Legal Assistant  
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DEFENDANTS

**TRIBUNE BROADCASTING FORT SMITH, LLC'S**  
**REQUEST FOR HEARING ON MOTION TO DISSOLVE**

Separate Defendant Tribune Broadcasting Fort Smith, LLC ("Tribune"), for its request for hearing on motion to dissolve *ex parte* Temporary Restraining Order, states:

1. The Honorable Doug Martin entered an *ex parte* Temporary Restraining Order on May 14, 2018, and scheduled a preliminary injunction hearing for 9:00 a.m. on May 17, 2018.
2. Judge Martin's *ex parte* Temporary Restraining Order prohibits Tribune from publishing advertisements produced by the Judicial Crisis Network "pending further orders from this Court."
3. On May 16, 2018, Judge Martin entered an Order recusing from this action and continuing the hearing, but leaving the *ex parte* Temporary Restraining Order in effect.
4. Tribune requests a hearing on its Motion to Dissolve the *ex parte* Temporary Restraining Order, which is an impermissible prior restraint on the press.
5. Pursuant to Arkansas Rule of Civil Procedure 65(b)(3), this hearing must be set "at the earliest possible time."
6. A hearing was originally scheduled for 9:00 a.m. on May 17, 2018.
7. The *ex parte* Temporary Restraining Order bars Tribune from publishing materials related to a judicial election scheduled to be held on May 22, 2018.



8. Accordingly, Tribune requests that the Court schedule a hearing and rule on its Motion to Dissolve the afternoon of May 17, 2018. Alternatively, Tribune requests that a hearing be scheduled for the afternoon of May 18, 2018.

9. Undersigned counsel has served counsel for plaintiffs with this request for a hearing.

WHEREFORE, Tribune Broadcasting Fort Smith, LLC respectfully requests that the Court schedule a hearing on Tribune Broadcasting Fort Smith, LLC's Motion to Dissolve, and for all other just and proper relief.

QUATTLEBAUM, GROOMS & TULL PLLC  
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By: 

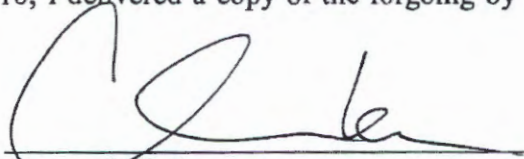
John E. Tull (84150)

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I hereby certify that, on May 16, 2018, I delivered a copy of the forgoing by electronic transmission to all counsel of record.

  
Christoph Keller





STACEY A. ZIMMERMAN  
CIRCUIT JUDGE

STATE OF ARKANSAS  
CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT  
JUVENILE DIVISION  
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May 16, 2018

Sharri Stewart  
Administrative Office of the Courts  
Justice Building  
625 Marshall Street  
Little Rock, AR 72201

*Via email, Facsimile and regular  
mail at 7:45 p.m.*

**RE: *Courtney Goodson and Courtney Goodson Campaign v. Tribune Broadcasting Fort Smith, LLC; Cox Media, LLC and Nexstar Broadcasting, Inc. Washington County Circuit Case No. 72CV-18-1326***

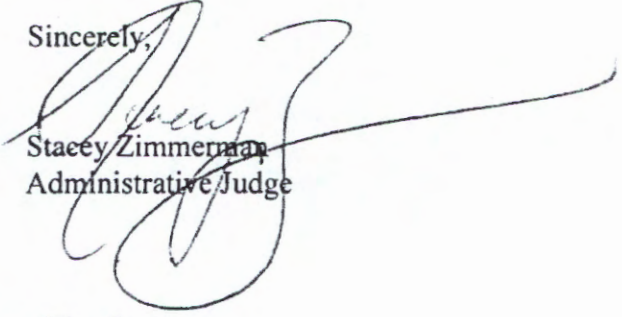
Dear Ms. Stewart:

In accordance with the provisions of Administrative Order No. 16, Section 3 and the standard procedure, I am requesting that Chief Justice Kemp assign a special judge to hear the above-referenced case. Judge Doug Martin recused on the case but did not send to me nor to my trial court administrator a copy of his order of recusal. After I finished my cases tonight, I received an email from Mr. Christoph Keller (which he copied to the other attorneys of record) at around 6:00 p.m. tonight requesting that the case be reassigned and heard as soon as possible. I then contacted the other circuit judges in our district and the remaining five of us disqualified ourselves from hearing the case. Judge Bryan has already recused. As time is of the essence, at 7:20 p.m. tonight I contacted attorneys Keller, Vowell and Hoover by conference call to advise them that all the circuit judges in our district have disqualified themselves and that I will be

requesting Chief Justice Kemp to assign a special judge. The Plaintiff is represented by attorney Steven Vowell. The Defendants are represented by Christoph Keller and John Tull.

Thank you very much for your assistance.

Sincerely,

  
Stacey Zimmerman  
Administrative Judge

Distribution List:

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