

JANICE STEIDLEY,

Plaintiff,

VS.

WILLIAM "BILL" HIGGINS, ERIN O'QUIN,
CARL WILLIAMS, SALLY WILLIAMS, EDITH
SINGER, RANDY COWLING, BAILEY
DABNEY, SALESHA WILKEN, NEWSPAPER
HOLDINGS, d/b/a, CLAREMORE DAILY
PROGRESS, COMMUNITY NEWSPAPER
HOLDINGS,

Defendants.

[illegible]

Case No. CJ-15-370

KIM HENRY, COURT CLERK

NOW ON THIS 11th day of February 2016, this matter comes before the Court upon Defendant's Motion To Dismiss, and a request for Findings regarding Title 12 O.S. §1436, and a request of the Plaintiff to determine the Oklahoma Citizens Participation Act (OCPA), 12 O.S. §1430, unconstitutional. Based on the pleadings of record and the argument of counsel, the COURT FINDS AND ORDERS as follows:

1. The Court relies upon the clear language of Title 12 O.S. §1430 et. seq., otherwise known as the Oklahoma Citizens Participation Act (OCPA).
2. The expressed purpose of the OCPA, as stated in §1430, is to “encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely and otherwise participate in government to the maximum

extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.”

3. The reason for which Plaintiff (formerly public official) brings her lawsuit arises from certain Defendants’ actions to petition and seek legal action against her by way of a grand jury indictment, and how other Defendants assisted or supported those actions.
4. Once a Petition is filed, the OCPA provides the procedure allowing the Defendants to move for dismissal of the case.
5. That procedure is set forth in 12 O.S. §1434.
6. Pursuant to §1434(B), the Defendants can show that their actions against the Plaintiff are based on, relate to or are in response to a their exercise of: 1) The right of free speech; 2) The right to petition; or 3) The right of association.
7. From the facts presented, Defendants’ actions were an expression of said rights.
8. Once Defendants have shown their speech or actions fall under §1434(B), then Plaintiff is required to establish by clear and specific evidence a prima facie case for each essential element of the claim in question.” See §1434(C).
9. Assuming the Plaintiff complies with §1434(C), the next step, per §1434(D), is that the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the non-movant's claim.”

10. In this case, the Plaintiff did not submit any information or evidence to establish clear and specific evidence of a prima facie case. Instead, Plaintiff has chosen to contest the constitutionality of the OCPA.
11. The State of Oklahoma, by and through the office of Attorney General, has intervened to support the constitutionality of the OCPA.
12. In considering whether a statute is constitutional, courts are guided by well-established principles and a heavy burden is cast on those challenging a legislative enactment to show its unconstitutionality. Fent v. Okla. Capitol Improvement Authority, 1999 OK 64. Every presumption is to be indulged in favor of the constitutionality of a statute. *Id.*
13. Plaintiff argues the OCPA is unconstitutional under the Oklahoma Constitution, Article 5, §46.
14. Art. 5 § 46 provides that the legislature shall not, except as otherwise provided in the Constitution, pass any local or special law authorizing certain specified acts.
15. The issue to be resolved in an Art. 5 § 46 attack is whether a statute upon a subject enumerated in that section targets for different treatment less than an entire class of similarly situated persons or things. Thomas v. Henry, 2011 OK 53. See also Zeier v. Zimmer, 2006 OK 98.
16. Courts are instructed to look to see whether part of an entire class of similarly-affected persons is separated for different treatment. See Henry.
17. At first glance, it may appear as though the OCPA treats one class of defamed people different than another. However, the United States Supreme

Court has already provided that when it comes to a citizen's right to speak against government officials, government officials will be treated differently over an average citizen. See New York Times v. Sullivan, 376 U.S. 254.¹

18. Considering cases like Sullivan and its progeny, the OCPA recognizes the different application and standard for those who represent the people, whether it be the undersigned judge, a state representative, a county treasurer, or in this case, a District Attorney.
19. The OCPA does not create a special class or treat some public officials differently than others. As the law is written, all public officials would be treated the same.
20. To this degree, the OCPA does not change the rules of evidence, it merely acknowledges the well-established right of citizens to stand up to any level of their government.
21. Therefore, the OCPA is consistent with our constitution under Article 5, §46.
22. Plaintiff further alleges the OCPA works to deny a litigant the right to a jury trial by requiring a litigant to show by specific and clear evidence a prima facie claim, and then to dismiss the claim upon a motion to dismiss provided there is a valid First Amendment defense.
23. This is not unique in that a Defendant can always file a Motion To Dismiss in any case, assuming there are reasonable grounds to do so. This by itself does not render the OCPA unconstitutional.

¹ The Supreme Court found that upon suing a newspaper by a public official, the First Amendment protects the publication of all statements, even false ones, about the conduct of public officials except when statements are made with actual malice.

24. The OCPA simply recognizes there are other fundamental rights at stake when a public official sues a citizen who spoke out against her.
25. It should be noted that in a recent decision from the Oklahoma Court of Civil Appeals the court held the same "clear and specific" prima facie standard was seen as being appropriate for the trial court to consider in its role as gatekeeper. Further, that the clear and specific standard is not a burden of proof, but an early-stage, threshold measure of the prima facie case. (See Steven C. Anagnost, M.D., v. Frank J. Tomecek et. al., COCA Division I, Appellate Case No. 113,748, dated February 5, 2016, released for publication but not yet given citation).
26. In addition to exercising their First Amendment rights, the Defendants are exercising their rights as established in our Oklahoma Constitution.
27. Article 2, §1 provides that all political power is inherent in the people. It further provides that the people have the right to alter or reform the same whenever the public good may require it.
28. Perhaps more applicable to the Defendants, Article 2, §3 of the Oklahoma Constitution provides that the people have the right peaceably to assemble for their own good, and to apply to those invested with powers of government for redress of grievances by petition, address, or remonstrance.
29. Any lawsuit brought against citizens of Oklahoma for exercising these expressed rights must be viewed cautiously. The OCPA operates to do just that.

30. The plaintiff is seeking damages, which would, by its very nature, punish citizens for exercising their constitutional rights against their government and an elected official.
31. There is great concern for these protections granted by our constitution. The Oklahoma Supreme Court has ruled that legitimate attempts to influence government action are absolutely protected from civil liability by fundamental guarantee to petition for redress of grievances. Gaylord Entertainment Co. v. Thompson, 1998 OK 30. The court in Thompson went on to say that this protection exists even though the result of such activities may indirectly cause injury to others. Id.
32. The Court would recognize, as it was argued by Plaintiff's counsel, that these rights are not absolute. However, it goes to show a very strong tendency to protect Oklahomans who speak out against their government from retribution by the government or government officials
33. It is in the light of cases like Thompson and the protections afforded by our state constitution that this Court reviews the constitutionality of the OCPA.
34. The obligation of a public official under the OCPA to provide a prima facie showing by clear and specific evidence is not a bar to litigation. Rather, it simply takes into consideration the special and unique nature of a citizen's constitutional rights to act against one's government.
35. However, it is clear the legislature realized a public official may still have the right to sue a citizen for speaking out against her, and it created a timeline for

determining if the rights granted in our U.S. and State Constitutions were abused by a citizen. See 12 O.S. §1432.

36. This procedure, set forth in §1432 and §1434 allows the court to act as a gatekeeper and to ensure that a citizen is not punished for exercising their rights against the government.

37. Thus, §1434(D), which states "notwithstanding the provisions of subsection C of this section, the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim," is another protection to the citizen.

38. Given the great protections to the citizens from government powers already mentioned herein, the statutory protections afforded by the OCPA would be reasonable to protect a citizen against retribution by a government actor.

39. This Court can find no justification for declaring the OCPA unconstitutional.

40. Further, the Plaintiff has failed to present any evidence, whether it be clear and specific or otherwise, to contest the Defendant's motion to dismiss.

41. In fact, at the motions hearing on February 2, 2016, the Plaintiff's failure to respond to the §1434(B) defense, as is required by §1434(C), was raised by one of the Defendants' counsel. At that time, Plaintiff did not attempt to argue their obligation to present a prima facie case, nor did Plaintiff request time to make such a case. Instead, Plaintiff relied solely upon the unconstitutionality of the OCPA.

42. Given the time constraints provided by the OCPA and the time in which the trial court is directed to make a decision on the motions, the Plaintiff has failed to timely respond.

43. Therefore, the Defendants have successfully challenged Plaintiff's Petition under the OCPA.

44. The Defendants' Motions To Dismiss are hereby sustained.

45. Defendant Higgins has requested specific findings under the OCPA pursuant to 12 O.S. §1436.

46. Plaintiff alleges the attorney fees portion of the OCPA is unconstitutional as well. That argument is without merit.

47. However, §1436 appears to suggest a retroactive intent upon the Plaintiff. §1436 requires that at the request of a party making a motion (for attorney fees) the court shall issue findings regarding (1) whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights; and (2) whether the legal action is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

48. This Court cannot find that this legal action, in any way, was brought to deter or prevent the moving party from exercising their constitutional rights. Their rights were exercised and not affected by the filing of the Petition. What was done, was done. The statute seems to suggest that attorney fees would be awarded if the Plaintiff acted to preempt Defendant's actions. That is not the case here.

50. Therefore, attorney fees under §1436 shall not be awarded.


Judge of the District Court