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IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

ROBERT J. MILLER, JR., )  
individually, )  
Plaintiff, )  
v. )  
RYAN WALTERS, )  
individually and in his personal )  
capacity, )  
Defendant. )

Case No. CJ-2024-03052  
The Honorable William D. LaFortune

DISTRICT COURT  
**FILED**

OCT 02 2024

DON NEWBERRY, Court Clerk  
STATE OF OKLA. TULSA COUNTY

MOTION TO DISMISS WITH PREJUDICE

Defendant, Ryan Walters (“Superintendent Walters”), respectfully moves to dismiss the Petition filed by Plaintiff, Robert J. Miller, Jr., pursuant to the Oklahoma Citizens Participation Act (“OCPA”), 12 *Okla. Stat.* § 1430 et seq., as well as 12 *Okla. Stat.* § 2012(B)(1) and (6). In support, Superintendent Walters states as follows:

BACKGROUND

Superintendent Walters has served as the elected State Superintendent of Public Instruction (“State Superintendent”) for the Oklahoma State Department of Education (“OSDE”) since assuming office in January of 2023. Pursuant to his statutory duties as the head agency executive of the OSDE, Superintendent Walters is responsible for, among other things, “all matters pertaining to the policies and administration of the public school system.” 70 *Okla. Stat.* § 3-107.1(1). Chief among these obligations is the State Superintendent’s duty to “advise school district superintendents... on questions as to the powers, duties and functions of school

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district officials.” *Id.* at § 3-107. In addition to his responsibilities to the OSDE, the State Superintendent also functions as the chairperson for the State Board of Education (“SBE”). *See* 70 *Okla. Stat.* §§ 3-101(A), 3-104(A)(6).

On July 27, 2024, one such district superintendent, Plaintiff, took to “X” (formerly known as Twitter), to criticize Superintendent Walters’s leadership and supervisory effectiveness as the head of OSDE. Plaintiff posted, in part:

It’s nearly August, and #oklaed schools have yet to receive Title I allocations from @OSDE for FY25, which started July 1.... The talent drain at the @OSDE and the absence of leadership and accountability are directly responsible for this situation. Maybe @RyanWaltersSupt can take a break from his travel and media events, stop by the office (if he remembers where it is), and help us out.

Superintendent Walters did not immediately respond; however, on July 31, 2024, the State Superintendent received an inquiry during a regularly held press conference after an SBE board meeting as to the criticisms Plaintiff shared on social media. As the elected official responsible for overseeing public school funding and the operation of the OSDE - matters of obvious public concern - Superintendent Walters, in his official capacity, addressed Plaintiff’s grievances with the funding at issue. At the press conference, Superintendent Walters stated:

He’s a liar. I mean, he’s really a true embarrassment. He knows every year when get gets the Title I funds, and we’re dealing with all kinds of financial problems with his district that we’re hoping to address right now. So you know, Rob - Rob’s a clown and a liar. So he knows that. Same time every year - at least late August. It’s the same way it’s been every year for, my team tells me, over a decade. So he knows that has been communicated to districts. Rob’s never reached out, never indicated there’s

an issue. There's not an issue. He made it up. So he wants his name in the press.<sup>1</sup>

The same day, following media reports of Superintendent Walters's statements to the press, Plaintiff took to social media once again. In various posts to his "X" account, Plaintiff stated the State Superintendent was "lying," "stuck in middle school," and demanded an apology for "false statements and ad hominem attacks."

In response to Superintendent Walters's statements as to the veracity of Plaintiff's allegations on social media, Plaintiff initiated this suit on August 15, 2024, alleging the State Superintendent made "false, defamatory, and malicious utterances" during the SBE press conference. (Petition, ¶ 21). Plaintiff further asserts that since the press conference, Superintendent Walters has maliciously, "whether by *implication* or direct accusation, publicly and maliciously accused [Plaintiff] of being 'rogue,' in support of 'pornography' in schools, an advocate of 'pedophilia,' and against the teachings of the Bible." (Petition, ¶ 25; emphasis added). Finally, Plaintiff baselessly speculates Superintendent Walters was the "unnamed department spokesperson" who addressed the Bixby superintendent's criticisms in a statement to KOTV-Channel 6. (Petition, ¶ 26). Plaintiff contends each such comment was defamation for which Superintendent Walters is liable, individually, and in his personal capacity; in addition, Plaintiff recasts each such claim as the separate tort of false light.

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<sup>1</sup> For the purposes of this Motion, Superintendent Walters does not dispute the accuracy of the quote attributed to him, as recited in Plaintiff's Petition at ¶ 21. See *Indiana Nat'l Bank v. State Dep't of Human Servs.*, 1994 OK 98, ¶ 3, 880 P.2d 371 (upon review of a motion to dismiss, the Court will "accept the allegations of the petition as true and we construe them in the light most favorable to Plaintiff.").

Plaintiff's lawsuit against Superintendent Walters is frivolous. Insofar as Plaintiff seeks damages for actions taken by Superintendent Walters in fulfilling his official duties as the elected State Superintendent, Oklahoma's Government Tort Claims Act ("GTCA") grants Defendant immunity from suit and bars such recovery. Thus, this Court lacks subject matter jurisdiction over the present claims; further, Plaintiff cannot overcome the lack of facts sufficient to support this action.

Likewise, Plaintiff cannot overcome the protections afforded Superintendent Walters under the First Amendment to the United States Constitution, Article II, § 22 of the Oklahoma Constitution, and the Oklahoma Citizens Participation Act ("OCPA"). On its face, this suit is a transparent effort to punish Superintendent Walters for exercising his First Amendment rights - precisely the type of lawsuit contemplated by the OCPA, and thus subject to its expedited dismissal procedure. Accordingly, the Court should dismiss this action *with prejudice*.

### **ARGUMENT AND AUTHORITIES**

#### **I. PLAINTIFF'S CLAIMS ARE NOT ACTIONABLE BECAUSE THE GTCA IS THE SOLE REMEDY FOR TORT ACTIONS AGAINST THE STATE OF OKLAHOMA AND ITS PUBLIC OFFICIALS.**

The GTCA is the exclusive mechanism for an injured party to recover, in tort, against a governmental entity or employee. *Teeter v. City of Edmond*, 2004 OK 5, ¶ 21, 85 P.3d 817. Based on common law sovereign immunity, the GTCA provides that "[t]he state, its political subdivisions, and all of their employees acting within the scope of their employment, whether performing governmental or proprietary functions, shall be immune from liability for torts." 51 *Okla. Stat.* § 152.1(A). It is

evident from the face of the Petition that Plaintiff's allegations are in response to statements made by the State Superintendent in his capacity as a state employee.

As noted by the Oklahoma Supreme Court, “[t]he concept of sovereign immunity has characteristics both consistent and inconsistent with general principles of subject matter jurisdiction. Common law sovereign immunity is similar to subject matter jurisdiction in that immunity acts to bar a court from adjudicating a particular class of causes of action.” *State ex re. State Ins. Fund v. JOA, Inc.*, 2003 OK 82, n.5, 78 P.3d 537; *see also Farley v. City of Claremore*, 2020 OK 30, ¶ 16, 465 P.3d 1213. Because the GTCA provides the sole remedy for tort actions against state officials acting in their official capacity, this Court lacks jurisdiction. Dismissal is mandatory in such instances where there is a “[l]ack of jurisdiction over the subject matter.” *See 12 Okla. Stat. § 2012(B)(1)*.

Application of the GTCA is not only a barrier to subject matter jurisdiction – it also requires dismissal under *12 Okla. Stat. § 2012(B)(6)* for failure to state a claim upon which relief can be granted. *See Benshoof v. Niles*, 2016 OK CIV APP 57, ¶ 21, 380 P.3d 902; *see also Farley, supra*, ¶ 16, 465 P.3d at 1224. A Petition shall be dismissed “as a matter of law for two reasons: (1) lack of any cognizable legal theory, or (2) insufficient facts under a cognizable legal theory.” *Indiana Nat'l Bank v. State Dep't of Human Servs.*, 1994 OK 98, ¶ 4, 880 P.2d 371. “Such a motion should be granted if ‘the allegations indicate beyond any doubt that Plaintiff can prove no set of facts which would entitle him to relief on his libel-based action.’” *Benshoof, supra*, ¶ 18, 380 P.3d at 906 (quoting *Frazier v. Bryan Mem'l Hosp. Auth.*, 1989 OK 73, ¶ 13,

775 P.2d 281). Accordingly, dismissal pursuant to the GTCA is appropriate under either theory: lack of subject matter jurisdiction under § 2012(B)(1) or failure to state a claim upon which relief can be granted under § 2012(B)(6).

**A. SUPERINTENDENT WALTERS HAS GTCA IMMUNITY FOR TORTIOUS STATEMENTS MADE WITHIN THE SCOPE OF HIS OFFICIAL DUTIES.**

Where a plaintiff brings a tort action against a state official for “performing duties within the scope of their employment... they cannot *as a matter of law* pursuant to the GTCA be held liable for tortious actions within the scope of that employment.” *Benshoof, supra*, ¶ 21, 380 P.3d at 907. (emphasis added). “This immunity grant allows public employees to perform their duties and make decisions on behalf of the state free from fear of suit.” *Nelson v. Pollay*, 1996 OK 142, ¶ 7, 916 P.2d 1369, 1373.

As an elected official, Superintendent Walters is a state “employee” under the GTCA. 51 *Okla. Stat.* § 152(7)(a)(1). The GTCA goes on to define a state employee’s “scope of employment” as “performance by an employee acting in good faith within the duties of his office or employment[.]” *Id.* at § 152(12). Notably, Oklahoma Court of Civil Appeals has specifically affirmed a trial court’s dismissal of defamation claims against government employees to the degree such state actors “were acting on behalf of their employer performing duties within the scope of their employment[.]” *Benshoof, supra*, ¶ 21, 380 P.3d at 907. Thus, insofar as each statement attributed to Superintendent Walters was made in the performance of his official duties, he is entitled to GTCA immunity – and thus, dismissal.

**B. ALL OF SUPERINTENDENT WALTERS'S STATEMENTS WERE MADE IN HIS OFFICIAL CAPACITY AND WITHIN THE SCOPE OF HIS EMPLOYMENT.**

Plaintiff cannot circumvent the well-established immunity granted to public officials under the GTCA by framing his claims as being directed against the State Superintendent "individually." While the Petition states Plaintiff's tort claims are against Superintendent Walters "in his personal capacity," each subsequent paragraph describes conduct of both parties taken in furtherance of the duties assigned their respective offices. Every allegedly defamatory statement attributed to Superintendent Walters was made in his official capacity to the media, either as State Superintendent or as an official statement on behalf of the OSDE; no such statements are attributable to Defendant, individually, or in his personal capacity. (*See* Petition, ¶¶ 21, 24-26).

Notably, each of Superintendent Walters's statements were made in the context of Plaintiff's public inquiries as to the management of federal funding and OSDE oversight – matters not only of obvious public concern, but which fall squarely within the scope of the State Superintendent's statutory duties as the administrative head of Oklahoma's public-school system. *See* 70 Okla. Stat. § 3-107 ("The State Superintendent shall have control of and direct the State Department of Education and shall perform any other duties pertaining to the public school system as shall be prescribed by law or the State Board of Education."); 70 Okla. Stat. § 3-107.1(1).

In addition to his responsibilities to the OSDE, Superintendent Walters also functions as the chairperson for the SBE, which is likewise vested with significant supervisory powers over the public school system, including the licensure and

certification of public-school officials – including district superintendents. *See* 70 *Okla. Stat.* §§ 3-101(A), 3-104(A)(6). Thus, Plaintiff is necessarily subject to the administrative authority and oversight granted to the State Superintendent, the OSDE, and the SBE. *See* 70 *Okla. Stat.* §§ 3-101(A), 3-104(A)(6), 3-107, 3-107.1(1). Moreover, the SBE is also responsible for the distribution of all federal funds provided for use in the public-school system – including the Title I funds about which Plaintiff inquired. *See* 70 *Okla. Stat.* § 3-104(A)(8).

Plaintiff publicly raised his concerns, as a district superintendent, regarding the SBE's allocation of federal and Superintendent Walters's fitness to oversee such efforts. (Petition, ¶¶ 19, 29). In addition to the questions posed on social media, reporters – at a routine press conference after an SBE meeting – also asked the State Superintendent to respond, specifically to Plaintiff's complaints of mismanagement. (Petition, ¶ 20). Each of the State Superintendent's statements were made in response to inquiry made of him in his official capacity. Thus, each such statement was in furtherance of his elected duties: the management of federal funds and the OSDE, as well as evaluation of a subordinate public-school official's job performance. Because each of the allegedly defamatory statements for which Plaintiff seeks to impose liability were made within the scope of Superintendent Walters's employment and in his official capacity, he is immune under the GTCA, as a matter of law, and Plaintiff's claims must be dismissed *with prejudice*.



**II. EVEN IF HIS STATEMENTS WERE MADE IN HIS INDIVIDUAL CAPACITY, SUPERINTENDENT WALTERS IS ENTITLED TO DISMISSAL UNDER THE OCPA.**

Setting aside the fatal limitations of the GTCA, this lawsuit is likewise barred by the OCPA. As an anti-“SLAPP” (Strategic Lawsuits Against Public Participation) statute, the OCPA is designed to protect citizens who exercise their First Amendment rights from frivolous litigation that seeks to chill, intimidate, and silence them. *See* 12 *Okla. Stat.* § 1430. The express purpose of the OCPA 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” while “at the same time, protect the rights of persons to file meritorious lawsuits for demonstrable injury.” *Krimbill v. Talarico*, 2018 OK CIV APP 37, ¶ 6, 417 P.3d 1240 (quoting 12 *Okla. Stat.* § 1430(B)).

The OCPA’s immunity is applicable where a legal action is “based on, relates to or is in response to a party’s exercise of the right of free speech, right to petition or right of association[.]” 12 *Okla. Stat.* § 1432(A). The OCPA defines the “right of free speech” as “a communication made in connection with a matter of public concern.” 12 *Okla. Stat.* § 1431(3). A “matter of public concern” includes, but is not limited to, issues relating to “the government,” or “a public official or public figure.” *Id.* § 1431(7)(c)-(d).

**A. THE OCPA IMPOSES A HEIGHTENED PLEADING STANDARD REQUIRING CLEAR AND SPECIFIC EVIDENCE OF A *PRIMA FACIE* CASE AS TO EACH ELEMENT OF EACH CLAIM.**

Recognizing the necessity of protecting individuals exercising their free speech rights to participate in public discourse without fear of retribution, the OCPA

provides a streamlined mechanism to address the *prima facie* validity of lawsuits which implicate such rights. See 12 Okla. Stat. §§ 1432-1437; see also *Anagnost v. Tomecek*, 2017 OK 7, ¶ 9, 390 P.3d 707 (the OCPA is “devoted to deterring, preventing and dismissing certain free speech/association/participation type lawsuits as soon as possible after filing.”). A party establishes a *prima facie* case by producing competent evidence to support each material element of its cause of action. *Jackson v. Jones*, 1995 OK 131, ¶ 4, 907 P.2d 1067. In determining whether Plaintiff has met his burden, the Court is to accept the Petition’s factual allegations as true – unless controverted by an affidavit or documentary evidence. 12 Okla. Stat. § 1435; *Southwest Orthopaedic Specialists, PLLC v. Allison*, 2018 OK CIV APP 69, ¶ 22, 439 P.3d 430.

Upon the filing of an anti-SLAPP dismissal motion, the Court “***shall*** dismiss a legal action” if “the moving party shows by a ***preponderance of the evidence*** that the legal action is based on, relates to, or is in response to the party’s exercise” of their First Amendment rights. 12 Okla. Stat. § 1434(B) (emphasis added). If a defendant makes such showing, the Court ***shall*** dismiss the action unless the plaintiff “establishes by ***clear and specific evidence*** a *prima facie* case for each essential element of the claim in question.” *Id.* at § 1434(C) (emphasis added). Finally, even where a plaintiff can meet their burden under § 1434(C), the Court “***shall*** dismiss a legal action” if the defendant “establishes by a ***preponderance of the evidence*** each essential element of a valid defense” to the claim. *Id.* at § 1434(D) (emphasis added).

To avoid dismissal under the OCPA, Plaintiff must offer “clear and specific” evidence to support all elements of his claim for defamation *per se*. 12 Okla. Stat. § 1434(C). Such evidence must be “[s]omething more fact-intensive than general allegations that the required elements exist[.]” *Allison, supra*, ¶ 19, 439 P.3d at 436 (adopting the same standard Texas applies under its substantially similar anti-SLAPP statute). Thus, the OCPA’s pleading standard is “*more specific than that required to resist a traditional motion to dismiss*, in that something more than formulaic recitals of elements and a simple claim of damages is necessary.” *Id.* (emphasis in original); *see also Krimbill, supra*, ¶ 19, 417 P.3d at 1246 (the OCPA requires more than just “general facts supporting the elements of a cause of action.”). “Bare, baseless opinions do not create fact question, and neither are they sufficient substitute for the clear and specific evidence required to establish a *prima facie* case....” *Allison, supra*, ¶ 19, 439 P.3d at 436 (internal citations omitted).

Here, the Petition establishes, by a preponderance of the evidence, that this action is based on, and is in response to, Superintendent Walters’s exercise of his constitutional right to free speech. Plaintiff’s action is in direct response to comments on matters of public concern: the State Superintendent’s alleged mismanagement of federal funds, his failure to adequately supervise and lead the OSDE, and the veracity of such assertions made by a subordinate public official.<sup>2</sup> Accordingly, this case is

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<sup>2</sup> Notably, such matters of obvious public concern were the very same issues over which the public elected Superintendent Walters to exercise administrative authority, and about which Plaintiff specifically solicited the State Superintendent’s public response.

subject to dismissal unless Plaintiff can show a *prima facie* case by clear and specific evidence with respect to each and every element of his claims for defamation *per se* and false light. Plaintiff cannot meet such burden, and therefore the Court must dismiss the instant action *with prejudice*.

**B. PLAINTIFF CANNOT ESTABLISH A *PRIMA FACIE* CASE FOR EACH ESSENTIAL ELEMENT OF HIS CLAIM FOR DEFAMATION *PER SE*.**

Plaintiff asserts a defamation *per se* claim against Superintendent Walters but fails to establish each element by clear and specific evidence.<sup>3</sup> Oklahoma statute defines defamation *per se* as a “false and unprivileged publication, other than libel” that charges a crime, imputes disease or sexual irregularity, or tends to injure Plaintiff in respect to any known office or calling. *Standifer v. Val Gene Mgmt. Servs.*, 1974 OK CIV APP 41, ¶ 15, 527 P.2d 28; *see also* 12 Okla. Stat. § 1442. To recover under this theory of liability, a public figure, such as Plaintiff, must show: (1) the publication of a defamatory statement, (2) concerning the Plaintiff, (3) that was false, and (4) was made with “actual malice,” that is with knowledge that it was false or was made with reckless disregard of whether or not it was false[.]” *Yates v. Gannett Co.*, 2022 OK CIV APP 41, ¶ 14, 523 P.3d 69; *see also* *Grogan v. KOKH, LLC*, 2011

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<sup>3</sup> Though the Petition labels Count 1 as “Defamation (Libel, Libel *Per Se*, Slander, and Slander *Per Se*)” the succeeding paragraphs clarify that Plaintiff intends to assert that Superintendent Walters’s statements were *per se* defamatory as opposed to *per quod*. (Petition, ¶ 37). Any claim for defamation *per quod* must also be accompanied by a claim (and, under the OCPA, clear and specific proof) of “actual damage.” *Standifer v. Val Gene Mgmt. Servs.*, 1974 OK CIV APP 41, ¶¶ 13, 15, 527 P.2d 28.

OK CIV APP 34, ¶ 10, 256 P.3d 1021 (quoting *Hart v. Blalock*, 1997 OK 8, ¶ 9, 932 P.2d 1124).

“Put simply, there is ‘a formidable burden on a public figure plaintiff seeking to recover for defamation.’” *Yates, supra*, ¶ 16, 523 P.3d at 75 (quoting *Herbert v. Oklahoma Christian Coalition*, 1999 OK 90, ¶ 16, 992 P.2d 322, 328).

For the purposes of dismissal under the OCPA, the material facts asserted in the Petition are not in dispute; nevertheless, Plaintiff cannot establish by competent evidence that (1) each of Superintendent Walters’s statements were “of and concerning” the Plaintiff, and (2) the statements were made with actual malice. Thus, Plaintiff’s defamation claim fails as a matter of law.

***i. THE PETITION FAILS TO ESTABLISH THAT ALL OF SUPERINTENDENT WALTERS’S ALLEGED STATEMENTS WERE CONCERNING THE PLAINTIFF.***

Plaintiff cannot establish that each of the statements attributed to the State Superintendent were “of or concerning” Plaintiff – an essential element to defamation. *See* 12 Okla. Stat. § 1444.1; *see also Sturgeon v. Retherford Pubs., Inc.*, 1999 OK CIV APP, ¶ 10, 987 P.2d 1217 (citing RESTATEMENT (SECOND) OF TORTS § 558 (1997)). Thus, insofar as Plaintiff seeks to impose liability for portions of unknown statements made about him “indirectly” or “by implication,” he lacks basis to do so under Oklahoma law. *See Gonzalez v. Sessom*, 2006 OK CIV APP 61, ¶ 12, 137 P.3d 1245 (“In order for a false statement to be defamatory, it must concern the plaintiff.”); *Hargrove v. Okla. Press Pub. Co.*, 1928 OK 158, ¶ 4, 265 P. 635 (“[A] publication is actionable *per se* when the language used therein is susceptible of but one meaning, and that an opprobrious one, and the publication on its face shows that

the derogatory statements, taken as a whole, refer to the plaintiff[.]”); accord *Dusabek v. Martz*, 1926 OK 431, ¶ 6, 249 P. 145 (“[I]f the aid of innuendo is necessary to make the meaning defamatory, it is not [defamation] *per se*.”).

The Petition attributes certain “false and malicious statements” to the State Superintendent which purportedly concerned Plaintiff either “directly or indirectly” (Petition, ¶ 24). Plaintiff further alleges, even more tenuously, that Superintendent Walters, “whether by *implication* or direct accusation,” accused Plaintiff of “being ‘rogue,’ in support of ‘pornography’ in schools, and advocate of ‘pedophilia,’ and against the teachings of the Bible.” (Petition, ¶ 25; emphasis added). Notably, however, Plaintiff provides zero additional information – much less clear and specific evidence – regarding the substance of Superintendent Walters’s statements, when they were made, to whom, in what context, or where each statement was published. Because Plaintiff has failed to present competent evidence detailing the content, context, and publication of the State Superintendent’s alleged statements, any claim based on “indirect” references or “implications” cannot survive dismissal as a matter of law.

***ii. PLAINTIFF CANNOT ESTABLISH THAT SUPERINTENDENT WALTERS’S STATEMENTS WERE MADE WITH ACTUAL MALICE.***

The OCPA imposes a stringent evidence threshold for pursuing a claim against individuals exercising their free speech rights. But when such speech concerns a public official, as here, Plaintiff must overcome an additional hurdle to avoid dismissal: he must show that Superintendent Walters made such statements with “actual malice” or “reckless disregard for the truth.” See *Gaylord Entertainment Co.*

*v. Thompson*, 1998 OK 30, n.46, 958 P.2d 128; *see also New York Times v. Sullivan*, 376 U.S. 254, 280 (1964). “The actual malice test is subjective,” and requires sufficient evidence the speaker “acted with knowledge that [his] statements were false, or with reckless disregard of whether they were false or not.” *Roberts v. Bush*, 2023 OK CIV APP 32, ¶ 15, 537 P.3d 147. Further, reckless disregard for the truth requires evidence the speaker made such statements despite having “‘serious doubts’ concerning its truthfulness.” *Grogan, supra*, ¶ 10, 256 P.3d at 1027 (internal citations omitted). Thus, Plaintiff must establish – by clear and specific evidence – that Superintendent Walters “‘in fact entertained serious doubts as to the truth of his publication,’ or had a ‘high degree of awareness of...the probable falsity’ of the published information.” *Krimbill, supra*, ¶ 57, 417 P.3d at 1253 (quoting *Harte-Hanks Commc’ns v. Connaughton*, 491 U.S. 657, 688 (1989)). Here, the focus of inquiry is not on Superintendent Walters’s attitude toward Plaintiff, but rather his attitude toward the truth or falsity of his alleged defamatory statements. *See Herbert v. Okla. Christian Coalition, Inc.*, 1999 OK 90, ¶ 35, 992 P.2d 322. (“[A] defendant who was motivated to publish by the ‘blackest spirit of hatred and spite’ will not be liable if he subjectively believed in the truth of the statement[.]”).

The Petition merely asserts, in a formulaic and generalized manner, Plaintiff’s perception of Superintendent Walters’s degree of intent, and offers no factual basis or explanation for such claims. Plaintiff pleads only conclusory statements that Superintendent Walters “knew the statements were false, should have known they were false, had serious doubt whether the statements were true or false, and/or

should have had” such doubts. (Petition, ¶ 35). Plaintiff further attempts to cover the spectrum of all possible incantations of liability, baldly asserting Superintendent Walters made his statements with “actual malice as defined under the law of the State of Oklahoma.” (Petition, ¶ 38). These utterly unsupported accusations, however, are precisely the types of baseless, unsupported claims the OCPA is designed to discourage and do not satisfy the OCPA’s rigorous pleading standard. Because Plaintiff offers zero explanation or evidence regarding his subjective belief that Superintendent Walters spoke with actual malice, the OCPA demands dismissal.

***iii. SUPERINTENDENT WALTERS’S STATEMENTS ARE PROTECTED SPEECH.***

Moreover, the statements made at the press conference are protected political speech as either Superintendent Walters’s personal opinion or rhetorical hyperbole. The Oklahoma Supreme Court’s decision in *Price v. (David) Walters*, wherein two public figures engaged in a heated public dispute over various political matters, is instructive. 1996 OK 63, 918 P.2d 1370. There, Price was running for governor and his opponent, David Walters, issued a press release regarding Price’s alleged improper business dealings and noted that Price had “skeletons” in his closet regarding the same. *Id.* at ¶ 19. The Court held that these statements were personal opinion and hyperbole, and therefore protected speech:

These kinds of rhetorical expression of opinion are protected, and rightly so, because of the “realization that there exists a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open, and that the discussion



may well include vehement, caustic and sometimes unpleasantly sharp attack on public officials." *Jurkowski v. Crawley*, 637 P.2d 56, 58 (Okla. 1981). Where the tone of a piece is "pointed, exaggerated, and heavily laden with emotional rhetoric and moral outrage," readers are notified "to expect speculation and personal judgment."

*Id.* at ¶ 31 (quoting *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 32, 110 (1990) (Brennan, J., dissenting)).

The Court also quoted, at length, an influential opinion by Judge Robert Bork regarding the importance of the First Amendment as it relates to public debate among elected officials, such as Superintendent Walters and Plaintiff:

Of special relevance to us are Judge Bork's analyses of the impact of libel actions on the political arena and his observations regarding individuals who have become the subject of spirited public debate by voluntarily placing themselves in that arena. In part he stated:

It arouses concern that a freshening stream of libel actions, which often seem as much designed to punish writers and publications as to recover damages for real injuries, may threaten the public and constitutional interest in free, and frequently rough, discussion. Those who step into areas of public dispute, who choose the pleasures and distractions of controversy, must be willing to bear criticism, disparagement, and even wounding assessments. Perhaps it would be better if disputation were conducted in measured phrases and calibrated assessments, and with strict avoidance of the ad hominem; better, that is, if the opinion and editorial pages of the public press were modeled on The Federalist Papers. But that is not the world in which we live, ever have lived, or are ever likely to know, and the law of the first amendment must not try to make public dispute safe and comfortable for all the participants. That would only stifle the debate.

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In deciding a case like this, therefore, one of the most important considerations is whether the person alleging

defamation has in some real sense placed himself in an arena where he should expect to be jostled and bumped in a way that a private person need not expect. Where politics and ideas about politics contend, there is a first amendment arena. The individual who deliberately enters that arena must expect that the debate will sometimes be rough and personal.

*Id.* at ¶ 37 (quoting *Ollman v. Evans*, 750 F.2d 970, 978 (D.C. Cir. 1984) (internal citations omitted)).

The statements made by Superintendent Walters regarding Plaintiff being a “liar” and a “clown” at an SBE press conference are likewise opinion and hyperbole, especially in light of the context in which the statements were made and the topic of discussion: a reporter’s question about Plaintiff’s public complaints regarding federal funding for public schools. Like Superintendent Walters, Plaintiff is a public official, and, by way of his employment and subsequent social media posts, he deliberately entered the political sphere and, likewise, must expect that politics will sometimes be rough and personal. Being called a “liar” and a “clown” is tame in today’s heated political discourse. The response to such speech is more speech, not the suppression and punishment of speech that a politician dislikes, disagrees with, or which causes personal offense. This action is not just an attempt to stifle Superintendent Walters’s free speech – it also has the potential to set terrible precedent for future political debate. If Plaintiff is successful in this action, it would open the flood gates for politicians to sue each other – or their constituents – for political commentary.

**C. PLAINTIFF LIKELIKE CANNOT ESTABLISH A *PRIMA FACIE* CASE FOR EACH ESSENTIAL ELEMENT OF HIS CLAIM FOR FALSE LIGHT.**

Plaintiff attempts to recast his claim for defamation as a separate, distinct tort: false light invasion of privacy. First, this Court should reject Plaintiff's attempt to rebrand his defamation theory as false light based on the very same speech. Oklahoma courts "will not tolerate the relabeling of claims in order to avoid statutory and constitutional requirements of and limitation on particular claims." *Yates, supra*, ¶ 23, 523 P.3d at 79; *see also Nelson v. Am. Hometown Publ., Inc.*, 2014 OK CIV APP 57, ¶ 21, 333 P.3d 962 (rejecting a plaintiff's attempt to "recast a defamation claim as a different tort claim."); *Grogan, supra*, ¶ 33, 256 P.3d at 1037 ("[O]ne cannot circumvent the First Amendment by the label with which the suit is described.").

Further, even if Plaintiff is allowed to relabel his defamation claim as a distinct tort, because it is based entirely on the same speech regarding a matter of public concern (discussed *supra*) the heightened pleading standard under the OCPA is, again, determinative. *See id.* at ¶ 13 (applying the OCPA to false light claim based on the same purportedly defamatory communications already at issue). Thus, to recover under a theory of false light, Plaintiff must make a *prima facie* showing – by clear and specific evidence – of each element.

False light requires Plaintiff to prove three things: (1) "that [he] was portrayed in a false light, *i.e.*, 'the matter published concerning the plaintiff is not true,' (2) that the false portrayal would be highly offensive to a reasonable person such that the plaintiff would be 'justified in the eyes of the community in feeling seriously offended and aggrieved by the publicity,' and (3) that the publisher 'had knowledge of or acted

in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.” *Grogan, supra*, ¶ 10, 256 P.3d at 1027 (internal citations omitted); accord *Bates v. Cast*, 2014 OK CIV APP 8, ¶ 18, 316 P.3d 246. Importantly, to be actionable, “the disclosure must be a public discourse, and the facts must be private and of no legitimate public concern.” *Yates, supra*, ¶ 20, 523 P.3d at 79.

The State Superintendent’s statements were made in direct response to media inquiry about Plaintiff’s criticisms of the OSDE, generally, and Superintendent Walters, specifically. Further, Plaintiff admits that, as a district superintendent, he is considered a public official. (Petition, ¶ 29). Additionally, each such statement about Plaintiff was made either in the context of a press conference held after an SBE meeting or as a public statement on behalf of the OSDE. Thus, Superintendent Walters’s statements were each on topics of legitimate public concern, and necessarily not of the “private” nature required to establish a *prima facie* case for false light. See *Yates, supra*, ¶ 20, 523 P.3d at 79.

But, even if Superintendent Walters’s statements may have incidentally touched on private matters not of concern to the public (which he did not), Plaintiff cannot demonstrate that the commentary – made by a public official, about a public official, regarding matters of public concern, in the course of political discourse – was so extreme that a reasonable person under the circumstances would find the State Superintendent’s statements “highly offensive.” Finally, just as Plaintiff cannot

satisfy the “actual malice” standard required to prove his defamation claim, he likewise cannot show the same as to his claim for false light.

Thus, even absent application of the OCPA’s free-speech protections, Plaintiff cannot satisfy the elements of a false light claim because he cannot demonstrate that Superintendent Walters’s statements were either “highly offensive” or made with “actual malice.” Because the State Superintendent’s statements involved matters of legitimate public concern, however, the OCPA applies in full force, and Plaintiff’s burden is even more unattainable. Therefore, Plaintiff’s inability to show clear and specific evidence of each element of false light vitiates any liability on the part of Superintendent Walters, as a matter of law, and thus requires dismissal.

**D. SUPERINTENDENT WALTERS IS ENTITLED TO RECOVER ATTORNEYS’ FEES AND SANCTIONS SHOULD BE IMPOSED AGAINST PLAINTIFF.**

The OCPA provides that, upon dismissal of a legal action under the OCPA:

the Court *shall* award to the moving party: (1) “[c]ourt costs, reasonable attorney fees and other expenses incurred in defending against the legal action as justice and equity may require; *and* (2) [s]anctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in the Oklahoma Citizens Participation Act.

12 *Okla. Stat.* §1438(A)(1)-(2) (emphasis added); *see also Sudbury v. Deterding*, 2001 OK 10, ¶ 19, 19 P.3d 856. Sanctions are strongly supported under the circumstances for multiple reasons. *First*, the allegations in the Petition do not even satisfy the lax pleading requirements imposed by 12 *Okla. Stat.* § 2008, let alone what is required of a defamation action involving a public figure. Of the numerous statements attributed to Superintendent Walters, the Petition fails to establish that all were “of

and concerning” Plaintiff. *Second*, Plaintiff cannot establish that the State Superintendent’s statements about an appointed public school district’s superintendent – clearly involving a matter of public concern – were made with actual malice. *Third*, sanctions are appropriate to serve as notice that lawsuits between politicians over political issues and ideas are not a cost-free parlor game that will be countenanced or entertained by courts in Oklahoma. Accordingly, Superintendent Walters is entitled to recover his costs, attorney’s fees, and other expenses incurred in defending this action, as well as additional sanctions sufficient to deter Plaintiff from pursuing litigation in contravention of the OCPA.

### CONCLUSION

For the foregoing reasons, Superintendent Walters respectfully requests that the Court set this matter for hearing within sixty (60) days; stay all discovery as required by the OCPA; upon hearing, grant this motion and dismiss Plaintiff’s claims against Superintendent Walters *with prejudice*; award Superintendent Walters reasonable costs and attorneys’ fees mandated by the OCPA; and grant any other relief to which Superintendent Walters may be entitled.

Respectfully submitted,



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**Joel L. Wohl gemuth, OBA #9811**

**Chad J. Kutmas, OBA #19505**

**Hanna F. Roberts, OBA #33599**

**NORMAN WOHLGEMUTH, LLP**

401 S. Boston Avenue

Suite 3200 Mid-Continent Building

Tulsa, OK 74103

(918) 583-7571 (Telephone)

[JWohl gemuth@NWLawOK.com](mailto:JWohl gemuth@NWLawOK.com)

[CKutmas@nwlawok.com](mailto:CKutmas@nwlawok.com)

[HRoberts@nwlawok.com](mailto:HRoberts@nwlawok.com)

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of October 2024, a true and correct copy of the foregoing was mailed via first class mail postage prepaid to the following:

Michael L. Barkett

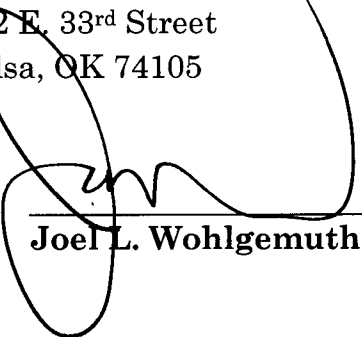
Rusty Smith

Stephen L. McClellan

**SMITH BARKETT LAW GROUP, PLLC**

1202 E. 33<sup>rd</sup> Street

Tulsa, OK 74105



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**Joel L. Wohl gemuth**