

JANE DOE, JOHN DOE, MARY ROE
RICHARD ROE, and BABY DOE,

Plaintiffs,

V.

SCOTT PRUITT, in his official capacity
as Oklahoma Attorney General, and

TODD HEMBREE, in his official capacity
as Cherokee Nation Attorney General,

ED LAKE, in his official capacity as the
Director of the Department of Human Services

Defendants.

Case No. 4:15-cv-00471
Judge John E. Dowdell
Magistrate Judge Frank H.
McCarthy

MOTION TO DISMISS AMENDED COMPLAINT AND BRIEF IN SUPPORT

Pursuant to Federal Rules of Civil Procedure 12 and 21, Defendant Attorney General E. Scott Pruitt moves to be dismissed from this suit as an improper party against whom Plaintiffs lack standing to bring a claim. This Motion seeks dismissal of the amended complaint based on the same reasons stated in the Attorney General's previous Motion to Dismiss the original Complaint (Doc. 18), but is filed out of an abundance of caution because it is not clear whether Plaintiffs have conceded dismissal of the Attorney General and because Plaintiffs filed an Amended Complaint that, though it does not list the Attorney General in its statement of the parties, it still includes the Attorney General in the case caption. Because the Attorney General of Oklahoma has no role in enforcing the challenged statute in this case, he is not the cause of Plaintiffs' alleged harm, cannot redress it, and may not be named as a defendant to this suit.

Plaintiffs challenge the constitutionality of certain provisions of the Oklahoma Indian Child Welfare Act (OICWA), OKLA. STAT., tit. 10, §§ 40 *et seq.*, suing the Attorney General in his official capacity. The Attorney General is not legally obligated to enforce the OICWA in voluntary

adoptions or otherwise. The OICWA imposes no duty on the Attorney General to enforce its provisions, vests no power in the Attorney General to ensure its dictates are followed, and grants no special rights or benefits to the Attorney General. *See* OKLA. STAT., tit. 10, §§ 40 *et seq.*

For this reason, the Attorney General is not a proper party to this suit. “In making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of the act” *Ex Parte Young* 209 U.S. 123, 157 (1908); *see also Finstuen v. Crutcher*, 496 F.3d 1139, 1151 (10th Cir. 2007) (“[T]he state officer against whom a suit is brought must have some connection with the enforcement of the [unlawful] act.”) (quotations omitted). Because the Attorney General has no connection with the enforcement of the OICWA, he should be dismissed as a party.

Moreover, because Plaintiffs’ claims are “simply not connected to the duties of the Attorney General,” Plaintiffs lack standing to sue the Attorney General. *Bishop v. Oklahoma*, 333 F. App’x 361, 365 (10th Cir. 2009). In *Bishop*, for example, the Tenth Circuit dismissed a suit against the Oklahoma Attorney General challenging Oklahoma’s same-sex marriage ban because marriage licenses are issued or denied by district court clerks, not the Attorney General, so the plaintiffs had no standing to sue the Attorney General. *Id.* Similarly, Plaintiffs here fail to meet the causation and redressibility elements of standing because the Attorney General will not cause their alleged prospective injury and relief directed against the Attorney General cannot redress their alleged injury. *See, e.g.,* OKLA. STAT., tit. 10, § 40.4 (requiring that “*the court* shall ensure that the district attorney or other person initiating the proceeding shall send notice” to the tribe) (emphasis added); *see also Bronson v. Swensen*, 500 F.3d 1099, 1110-12 (10th Cir. 2007) (plaintiffs did not have standing to sue county clerk in challenge to criminal prohibition of polygamy because the clerk had no authority to initiate criminal prosecution, the alleged cause of their harm, and an injunction against the clerk would not shield them from prosecution to redress their alleged injury).

Nor is the Attorney General's broad ability to defend the State of Oklahoma as a party sufficient to subject him to suit for every single state law. *See* 74 OKLA. STAT. § 18b. The Tenth Circuit has held that the Oklahoma Governor's and Attorney General's "generalized duty to enforce state law, alone, is insufficient to subject them to a suit challenging a constitutional amendment they have no specific duty to enforce." *Bishop*, 333 F. App'x at 365 (collecting cases).

For the foregoing reasons, the Attorney General respectfully requests to be dismissed from this suit.

Dated: November 19, 2015

Respectfully submitted,

/s/ Mithun Mansinghani
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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2015 I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and, through the ECF System, notice of this filing has been served on all parties.

/s/ Mithun Mansinghani
Mithun Mansinghani