

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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,

Defendants.

Case No. 4:15-cv-00471

Judge John E. Dowdell

Magistrate Judge Frank H.  
McCarthy

## MOTION TO DISMISS 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. 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. Plaintiffs claim that the Attorney General is “legally obligated to ensure the provisions of the [OICWA] are enforced.” Compl. ¶ 10. Plaintiffs do not cite any legal authority supporting this claim.

Contrary to Plaintiffs' assertions, 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: September 15, 2015

Respectfully submitted,

/s/ Mithun Mansinghani  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2015 I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I further certify that on September 15, 2015, the foregoing document was sent by U.S. Mail, postage prepaid, to the following counsel, who is not a registered participant of the ECF System:

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/s/ Mithun Mansinghani  
Mithun Mansinghani