

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

NOV 27 2024

DON KEENAN,

Plaintiff-Appellee,

v.

TODD RUSS, in his capacity as the Treasurer
of the State of Oklahoma

Defendant-Appellant.

JOHN D. HADDEN
CLERK

District Court No. CV-2023-3021

Supreme Court No.

#122686

UNOPPOSED MOTION FOR EXTENSION TO FILE RECORD ON APPEAL

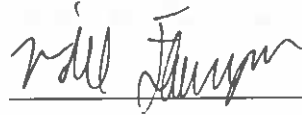
Defendant respectfully requests an extension of time of fourteen (14) days to file the record on appeal. Defendant's counsel has informed Plaintiff's counsel of this request, and Plaintiff does not object to this proposed extension.

Defendant submits the following in support:

1. On October 29, 2024, the district court signed the final order disposing of all claims in the case.
2. Defendant's petition in error and the record on appeal is due on December 2, 2024.
3. Defendant requests an additional fourteen (14) days, or until December 16, 2024, to file the record on appeal.
4. The record involves over twenty filings and the transcripts for four different hearings, which took time to compile. Currently, the record is at the Oklahoma County District Court Clerk's office awaiting certification. An extension will allow the office plenty of time to finish the process prior to the deadline—allowing for the concurrent filing of the record with the petition in error.
5. The extension will not prejudice Plaintiff or delay any proceedings before the Court, as no briefing schedule or hearing date has been set.
6. Defendant's request is made in good faith and not for the purpose of unnecessary delay.

7. For these reasons, Defendant respectfully requests this Court grant an extension of time to file the record on appeal.

Respectfully Submitted,



GARRY M. GASKINS, II, OBA 20212

Solicitor General

ZACH WEST, OBA 30768

Director of Special Litigation

WILL FLANAGAN, OBA 35110

Assistant Solicitor General

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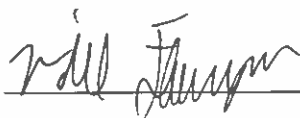
William.Flanagan@oag.ok.gov

Counsel for Defendant

CERTIFICATE OF SERVICE

This certifies that on this 27th day of November 2024 a true and correct copy of the foregoing MOTION FOR EXTENSION was mailed, postage prepaid to the following:

Collin Walke
Hall Estill
100 N. Broadway, Ste. 2900
Oklahoma City, OK 73102



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Counsel for Defendant

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

NOV 27 2024

JOHN D. HADDEN
CLERK

DON KEENAN,

Plaintiff-Appellee,

v.

District Court No. CV-2023-3021

TODD RUSS, in his capacity as the Treasurer
of the State of Oklahoma

Defendant-Appellant.

Supreme Court No.

#122686

PETITION IN ERROR

- PETITION IN ERROR
- AMENDED OR SUPPLEMENTAL PETITION
- CROSS PETITION
- COUNTER-PETITION
- DATE FIRST PETITION IN ERROR FILED: _____

I. TRIAL COURT HISTORY

COURT/TRIBUNAL: District Court
 COUNTY: Oklahoma
 CASE NO.: CV-2023-3021
 JUDGE: Honorable Sheila D. Stinson
 NATURE OF CASE: Declaratory Judgment

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:

Todd Russ, in his capacity as the Treasurer of the State of Oklahoma

THE APPEAL IS BROUGHT FROM: (Check one)

- Judgment, Decree or Final order of District Court.
- Appeal from order granting summary judgment or motion to dismiss (Accelerated procedure under Rule 1.36).
- Appeal from Revocation of Driver's License (Rule 1.21(b)).
- Final Order of Other Tribunal.
 (Specify Corporation Commission, Insurance Department,
 Tax Commission, Court of Tax Review, Banking Board or
 Banking Commissioner, etc. _____)
- Interlocutory Order Appealable by Right.
- Other

II. TIMELINESS OF APPEAL

- 1. Date judgment, decree or order appealed was filed: October 29, 2024.
- 2. Did the party appealing prepare the judgment, decree or order appealed? Yes ___ No.
- 3. Date the certificate of service was filed in the trial court: N/A
- 4. Does the judgment or order on appeal dispose of all claims by and against all parties?
 Yes ___ No.
If not, did district court direct entry of judgment in accordance with 12 O.S. § 994? ___ Yes ___ No.
When was this done? _____
- 5. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right? ___ Yes ___ No. Specific *statutory* basis for interlocutory order appealable by right: _____.
- 6. If none of the above applies, what is the specific *statutory* basis for determining the judgment or order is appealable? _____
- 7. Were any post-trial motions filed?

<u>Type</u>	<u>Date Filed</u>	<u>Date Disposed</u>
- 8. This Petition is filed by: Delivery to Clerk, or
___ Mailing to Clerk by U.S. Certified Mail, Return Receipt Requested, on _____(date)

III. RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceeding: *Keenan v. Russ*, No. IN-122241 (2024).

List all related appeals involving same issues: N/A

IV. SETTLEMENT CONFERENCE

Is appellant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250? ____ Yes No

V. RECORD ON APPEAL

____ A Transcript will be ordered.

____ No Transcript will be ordered because no record was made and/or no transcript will be necessary for this appeal

____ A Narrative Statement will be filed

Record is concurrently filed as required by Rule 1.34 (Driver's License Appeals, etc.) or Rule 1.36 (Summary judgments and motions to dismiss granted).

VI. JUDGMENT, DECREE OR ORDER APPEALED -- EXHIBIT "A"

Certified copies of the Summary Judgment Orders are attached as Exhibit A.

VII. SUMMARY OF CASE -- EXHIBIT "B"

A one-page summary of the case is attached as Exhibit B.

VIII. ISSUES TO BE RAISED ON APPEAL -- EXHIBIT "C"

The issues to be raised on appeal are attached as Exhibit C.

IX. NAME OF COUNSEL OR PARTY, IF PRO SE

ATTORNEYS FOR APPELLANT

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cwalke@hallestill.com

DATE: November 27, 2024

Verified by:



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X. CERTIFICATE OF MAILING TO ALL PARTIES AND
COURT CLERK

I hereby certify that a true and correct copy of the Petition in Error was mailed this 27th day of November 2024 by depositing it in the U.S. Mail, postage prepaid or by electronic mail to:

Collin Walke
Hall Estill
100 North Broadway Ave.
Oklahoma City, OK 73102

I further certify that a copy of the Petition in Error was mailed to, or filed in, the Office of the Court Clerk of the District Court of Oklahoma County on the 27th day of November 2024.



3. The Court's Conclusions of Law regarding vagueness and the Exclusive Benefit Rule from its May 7, 2024, *Order as to Plaintiff's Motion for Temporary Injunction* are incorporated herein as Conclusions of Law for the *Motion for Partial Summary Judgment*.

4. In rendering its decision, by virtue of the above incorporated provisions, as well as Plaintiff's incorporation of the same into his *Motion for Partial Summary Judgment*, the Court considered Plaintiff and Defendant's arguments pertaining to vagueness and violation of the Exclusive Benefit Rule from the hearing on Plaintiff's *Motion for Temporary Restraining Order and/or Temporary Injunction*, as well as the arguments pertaining to vagueness and violation of the Exclusive Benefit Rule made by Plaintiff and Defendant in their respective briefs for Plaintiff's *Motion for Temporary Restraining Order and/or Temporary Injunction*. The Court also considered, based upon references in Plaintiff's *Motion for Partial Summary Judgment*, Defendant's *Motion to Dismiss* and the *Response and Reply* thereto.

5. Accordingly, the temporary injunction issued by this Court on May 7, 2024, is now a permanent injunction, such that the Energy Discrimination Elimination Act, Okla. Stat. tit. 74, § 12001 *et seq.* (the "Act") is hereby declared unconstitutional for being unconstitutionally vague and violative of Okla. Const. Art. 23, § 12, and Defendant, his employees, agents, and successors in office are hereby enjoined from enforcing the provisions of the Act.

6. To the extent that a bond is required in order to make the current injunction effective, the Court sustains Defendant's *Motion to Set Bond* and sets the same in the amount of \$100.00.

7. Plaintiff's *Application for Writ of Prohibition* is stricken as moot.

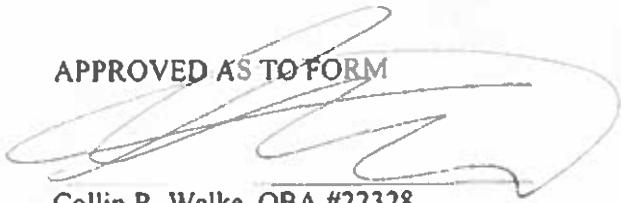
IT IS SO ORDERED.


SHEILA D. STINSON

JUDGE OF THE DISTRICT COURT

9/19/24

APPROVED AS TO FORM


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ATTORNEYS FOR DEFENDANT

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

SEP 20 2024

RICK WARREN COURT CLERK
Oklahoma County





IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

MAY 07 2024

RICK WARREN
COURT CLERK

DON KEENAN,

Plaintiff,

v.

Case No: CV-2023-3021

TODD RUSS, in his capacity as the
TREASURER OF THE STATE OF
OKLAHOMA,

Defendant.

**ORDER AS TO PLAINTIFF'S
MOTION FOR TEMPORARY INJUNCTION**

On February 13, 2024, Plaintiff's Motion for Temporary Restraining Order and/or Motion for Temporary Injunction came before this Court for consideration. Plaintiffs appeared by and through Collin Walke of Hall Mistill. Defendant appeared by and through Cheryl Plaxico of Plaxico Law Firm, PLLC. Following oral argument of counsel and review of the pleadings and exhibits submitted, the Court took the matter under advisement. Having considered the arguments and evidence presented, for the reasons set forth below, the motion is GRANTED.

I. FINDINGS OF FACT

1. The Oklahoma Energy Discrimination Elimination Act of 2022 ("Act"), 74 O.S. §12001, et seq., was enacted by HB 2034 of the 58th Oklahoma Legislature and became effective on November 1, 2022.

2. The Act prohibits government retirement systems from investing in companies that boycott energy companies. A "Boycott energy company" is defined as a company:

[W]ithout an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

a. engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil-fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or

b. does business with a company described by subparagraph a of this paragraph.

74 O.S. 12002(A)(1).

3. The Oklahoma State Treasurer is directed to "prepare and maintain and provide to each state governmental entity a list of financial companies that boycott energy companies. In maintaining the list, the Treasurer may:

a. review and rely, as appropriate in the Treasurer's judgment, on publicly available information regarding financial companies including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities, and

b. request written verification from a financial company that it does not boycott energy companies and rely, as appropriate in the Treasurer's judgment and without conducting further investigation, research, or inquiry, on a financial company's written response to the request."

74 O.S. 12003(A)(1)

4. Under the Act, any financial institution that does business with the State must verify in writing that it does not boycott energy companies and will not boycott energy companies during the institution's contract with the State. See 74 O.S. 12003(A)(2).

5. A financial company that fails to provide to the Treasurer a written verification before the 61st day after receiving the request from the Treasurer is presumed to be boycotting energy companies. See 74 O.S. §12003(A)(2)

6. The governmental entity is to send a written notice to the financial company warning that it may become subject to divestment and offer the company the opportunity to clarify its activities. If the financial company fails to divest from boycotting energy companies, then the State of Oklahoma will terminate its relationship with the financial company and sell, redeem,

divest, or withdraw State's funds held by the company in a staggered schedule. See 74 O.S. §12003(C).

7. A state government entity may "delay the schedule for divestment" only to the extent that the state governmental entity determines, in the state governmental entity's good-faith judgment, and consistent with the entity's fiduciary duty, that divestment from listed financial companies will likely result in a loss in value or an aggregate expected deviation from its benchmark-aware strategy. See 74 O.S. §12003(D)(3). Before the state government entity may cease divesting due to a loss in value, it must notify the State Treasurer, the presiding officer of each house of the legislature, and the Attorney General, and the entity must set forth, by clear and convincing evidence, its reason and justification. See 74 O.S. §12003(F).

8. The Act applies to contracts between a governmental entity and a company with ten or more full-time employees, and only to contracts for goods or services in which \$100,000.00 or more is payable to the company. If the requirements of the contract are met, the contract shall state the company does not and will not boycott energy companies during the term of the contract. See 74 O.S. §12005. This section of the Act does not apply if the governmental entity determines the requirements are inconsistent with the governmental entity's constitutional or statutory duties as to debt obligations or funds. See 74 O.S. §12005(B)(4)(a).

9. Exceptions to the Act are additionally addressed in 74 O.S. §12002(D)(3), §12003(D)(3), §12003(F), and §12005(4) all contain different language, requirements, and necessary evidentiary standards for the state governmental entity to be exempt from the divesting requirements.

10. On May 3, 2023, the Treasurer placed thirteen companies on the Oklahoma State Treasurer's Restricted Financial Companies List. See Plaintiff's Exhibit 2.

11. The Treasurer revised the Restricted Financial Companies list on August 15, 2023, to six companies, including the following: (1) BlackRock, Inc., (2) Wells Fargo & Co., (3) JPMorgan Chase & Co., (4) Bank of America, N.A., (5) State Street Corp., and (6) Climate First Bank. See Plaintiff's Exhibit 4.

12. The OPIERS Board of Trustees ("Board") estimated the cost of commissions, taxes, and fees related to divestment activity mandated under the Act to be \$9,700,000.00 to OPIERS. See Plaintiff's Exhibit 2. On August 23, 2023, the Board voted to exercise an exemption to the Act. See Plaintiff's Exhibit 1, pg. 1.

13. On September 14, 2023, the Treasurer notified the Board and the Executive Director of OPIERS that the "Board's actions were in opposition to the letter and spirit of the [Act], because the situation presented did not fall within the [Act's] narrow exceptions." See Plaintiff Exhibit 1, pg. 2. As Chairman of the State Pension Oversight Commission, the Treasurer stated that asset managers used OPIERS assets to "help push a political agenda on energy companies." See Plaintiff's Exhibit 1, pg. 14. He also stated the companies like "BlackRock and State Street have openly made commitments to use all assets under management-including OPIERS' assets-not for the benefit of OPIERS, but for their own ideological objectives." See Plaintiff's Exhibit 1, pg. 15. He requests the Board to reconsider its decision. See Plaintiff's Exhibit 1, pgs. 16-17.

14. Plaintiff is an Oklahoma taxpayer and beneficiary of the Oklahoma Public Employees Retirement System ("OPIERS"). See Petition at ¶¶1 and 8. He brings this suit as a taxpayer of Oklahoma. See Thomas v. Henry, 2011 OK 53, ¶6-7.

15. Plaintiff filed suit on December 21, 2023, and requested a Temporary Restraining Order and/or Motion for Temporary Injunction. Plaintiff alleges 1. The Act violates Oklahoma Constitution Art. 23, §12 (Exclusive Purpose of Benefits). 2. The Act violates Oklahoma

Constitute Art. 2 §22 (Freedom of Speech), 3. The Act violates Oklahoma Constitution Art. 2, §7 (Due Process) by being unconstitutionally vague, 4. The Act violates Oklahoma Constitution Art. 5, §46 (Special Law) and Art. 2, §6 as an impermissible barrier to the courts.

II. CONCLUSIONS OF LAW

1. TEMPORARY INJUNCTION

16. The purpose of a temporary injunction is to preserve the status quo and prevent the perpetuation of a wrong or the doing of an act whereby the rights of the moving party may be materially invaded, injured, or endangered. Edwards v. Bd. of Cnty. Comm'rs of Canadian Cnty., 2015 OK 58, ¶ 10, 378 P.3d 54, 58. A temporary injunction protects a court's ability to render a meaningful decision on the merit of the controversy. Okla. Pub. Emps. Ass'n v. Okla. Military Dep't, 2014 OK 48, ¶15, 330 P.3d 497, 504.

17. The Court must consider four factors in granting the temporary injunction: 1. Whether the plaintiff is likely to prevail upon the merits of the action, 2. Whether the plaintiff will suffer irreparable harm in the absence of injunctive relief; 3. Whether the irreparable harm which would be suffered by plaintiff if injunctive relief is withheld outweighs the irreparable harm which would be suffered by the defendant if injunctive relief is granted, and 4. Advancement of the public interest. Edwards, 2015 OK 58, ¶12.

18. The right to injunctive relief must be established by clear and convincing evidence and the nature of the injury must not be nominal, theoretical, or speculative. Dowell v. Fletcher, 2013 OK 50, ¶ 7, 304 P.3d 457.

A. LIKELIHOOD OF SUCCESS

i. VIOLATION OF OKLA. CONST. ART. 23, §12 (EXCLUSIVE BENEFIT)

19. The Oklahoma Constitution provides:

All the proceeds, assets and income of any public retirement system administered by an agency of the State of Oklahoma shall be held, invested, or disbursed as provided for by law as in trust for the exclusive purpose of providing for benefits, refunds, investment management, and administrative expenses of the individual public retirement system, and shall not be encumbered for or diverted to any other purposes.

Okla. Const. Art. 23, §12 [Emphasis added].

20. The OPERS funds are also governed by 74 O.S. §909.1 which require the Board to discharge their duties “solely in the interest of the participants and beneficiaries” and for the exclusive purpose of “providing benefits to participants and their beneficiaries....” §909.1(A)(1). Section 901.1(I) states, “At no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries shall any part of the corpus and income be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.”

21. The Act exempts the state governmental entity and the Treasurer from any conflicting statutory or common law obligations including “any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of financial companies, or choosing asset managers, investment funds, or investments for the state governmental entity’s securities portfolios.” 74 O.S. §12002(B).

22. The Act is, however, not able to exempt the Treasurer or the OPERS Board from the Oklahoma constitutional provision requiring the oversight and management of the assets to be for the exclusive benefit of participants. “The Constitution is the bulwark to which all statutes must yield.” *Liddell v. Heavner*, 2008 OK 6, ¶ 16, 180 P.3d 1191, 1199.

23. As stated by the Treasurer in his notice to the OPERS Board, the purpose of the Act is to counter the “political agenda” of certain financial companies and to assist the economic status of the oil and gas sector. See Plaintiff’s Exhibit 1.

24. The Court finds a substantial likelihood that this stated purpose of countering a “political agenda” is contrary to the retirement system’s constitutionally stated purpose. An attempt by the Treasurer or the Board to divest or transfer funds for any purpose other than the benefit of the members or beneficiaries is contrary to and a violation of Okla. Const. Art. 23, §12.

25. The issue before this Court is whether the Act and the directives of the Treasurer shift the constitutionally mandated exclusive purpose of the OPERS assets. The Court finds a substantial likelihood that Plaintiff will succeed on this issue.

ii. VIOLATION OF OKLA. CONST. ART. 2, §22 (FREEDOM OF SPEECH)

26. Plaintiff asserts the Act is an unconstitutional infringement of freedom of speech.

27. The Oklahoma Constitution states “[N]o law shall be passed to restrain or abridge the liberty of speech...” Okla. Const. Art 2, §22.

28. Plaintiff relies on federal case law primarily involving legislation prohibiting a boycott of Israel. Four of the federal cases relied on by the Plaintiff were dismissed or vacated due to procedural matters or changes in the underlying legislation addressing the class of possible plaintiffs.

29. As Oklahoma caselaw has not addressed this issue, the Court looks to Koontz v. Watson, 283 F.Supp.3d 1007 (D. Kan. 2018) and Arkansas Times LP v. Waldrip as Trustee of University of Arkansas Board of Trustees, 37 F.4th 1386 (8th Cir. 2022). In Arkansas Times, the Eighth Circuit looked to “what the [Act] bans: protected boycott-related activity, or non-expressive

commercial decisions.” Arkansas Times, 37 F.4th at 1392. This Court must look to whether the Act is prohibiting purely commercial, non-expressive conduct. Id. at 1394.

30. The Freedom of Speech does not “just prevent outright prohibition on speech; they also prohibit the government from imposing unconstitutional conditions that chill or deter speech.” Id. at 1391. “The government imposes an unconstitutional condition when it requires someone to give up a constitutional right in exchange for a government benefit.” Dolan v. City of Tigard, 512 U.S. 374, 385, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994). This includes making government benefits contingent on endorsing a particular message or agreeing not to engage in protected speech. Arkansas Times, 37 F.4th at 1391.

31. The *Koontz* Court addressed the State of Kansas requiring a written verification that Plaintiff did not boycott Israel. The court stated to “determine whether a state is infringing on an independent contractor’s rights under the First Amendment, courts use the same guidelines developed in Pickering v. Board of Education of Township High School District 205, Will County, Illinois, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed. 2d 811 (1968). See Koontz, 283 F.Supp.3d at 1020.

32. The *Pickering* test requires the plaintiff to show that the First Amendment protects the conduct that results in a denied governmental benefit. If so shown, the government must then present a legitimate countervailing government interest that is sufficiently strong to justify its encroachment. See Koontz, 283 F.Supp.3d at 1021. The government must show “the speech’s ‘necessary impact on the actual operation’ of the government outweighs the interests of the speakers and their audiences.” Id.

33. The U.S. Supreme Court has stated while “States have broad power to regulate economic activity, we do not find a comparable right to prohibit peaceful political activity such as that found in the boycott” of the subject merchants. NAAACP v. Claiborne Hardware Co., 458 U.S.

886, 907, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982). A State's "regulatory power over boycotts is limited when the boycott's main purpose is to influence governmental action." Id. at 914.

34. The government can regulate conduct under the First Amendment so long as the conduct is not inherently expressive. Rumsfeld v. Forum for Academic & Institutional Rights, 547 U.S. 47, 65-66, 126 S.Ct. 1297, 164 L.Ed. 156 (2006).

35. When evaluating whether a law affecting free speech serves a compelling governmental purpose, a court must inquire into the circumstances of the law's enactment. Doe v. City of Albuquerque, 667 F.3d 1111, 1132 (10th Cir. 2012).

36. This Court must ultimately consider whether the Act regulates inherently expressive conduct and if the intentions of the Act are for a compelling governmental purpose. At this time, the Court denies Plaintiff's request for a temporary injunction and allows this claim to continue to a final determination on its merits.

iii. VIOLATION OF OKLA. CONST. ART. 2, §7 (VAGUENESS)

37. Plaintiff alleges the Act is unconstitutionally vague. For the Court to sustain Plaintiff's request, it must determine if people of "common intelligence must necessarily guess at its meaning and differ as to its application." Cramp v. Bd. of Pub. Instruction of Orange County, Fla., 368 U.S. 278, 287, 82 S.Ct. 275, 7 L.Ed.2d 285 (1961).

38. It is only where an act of the Legislature is clearly, palpably, and plainly inconsistent with the terms and provisions of the Constitution that the courts will interfere and declare such act invalid and void. The action of the lawmaking power must in all cases be upheld unless its action is manifestly in contravention of the Constitution. Adwon v. Oklahoma Retail Grocers Ass'n, 1951 OK 43, ¶10, 228 P.2d 376, 377.

39. The accepted federal-law test of vagueness is whether the language of the enactment conveys, with respect to conduct one is expected to follow, sufficiently definite warning so that men “of common intelligence or understanding” will not have to guess at the statute's meaning. Arnett v. Kennedy, 416 U.S. 134, 94 S.Ct. 1633, 40 L.Ed.2d 15. See Matter of Daniel, Deborah & Leslie H., 1979 OK 33, ¶ 11, 591 P.2d 1175, 1177

40. In applying this test and reviewing any statutory language that is challenged as vague, it is proper to consider the purpose of the statute, and the legitimate interest that the state is seeking to protect by the statute. Lodes v. State ex rel. Oklahoma Real Est. Comm'n, 1992 OK CIV APP 23, ¶¶ 2-3, 837 P.2d 925, 926, and Armstrong v. State, 1991 OK CR 34, ¶20, 811 P.2d 593. Additionally, the court in Armstrong held that provisions dealing with business or financial transactions will be judged by whether they are “clearly stated and understandable by an ordinary person in a commercial context.” Id.

41. The Court notes five separate Sections of the Act contain conflicting and vague provisions as to the exemptions/exceptions governmental entities may claim and conflicts to the required evidentiary standards. The Sections also conflict as to the notification process when a governmental entity claims an exemption/exception to the Act. Most sections are silent to the governmental entity's required notification. 74 O.S. §12003(D)(4) sets forth a notification requirement for a delay in divestment, but such notification process does not exist for the exceptions of 74 O.S. §12002(D)(3), §12003(D)(3), §12003(F), §12005(4), and §12005(B)(4)(a).

42. The phrases “without an ordinary business purpose” (Section 12002(A)(1)) and “otherwise taking any action” (Section 12002(A)(1)) are not defined in the Act, but are vital to the function and application of the Act.

43. The Act contains two separate definitions of “governmental entity”. In 74 O.S. §12002(A)(8), “State governmental entity” is defined as “all state retirement systems.” “Governmental Entity” is later defined as a “state agency or political subdivision of this state.” See 74 O.S. §12005(A). The Court is aware §12005 limits its definition to only §12005. However, the Act is unclear if all state retirement systems are included in the definition of “Governmental Entity” of §12005 and permitted to apply the exception of §12005(4), and are therefore excused from the additional requirements of the prior Sections.

44. The Arkansas Times court applied the canon of ejusdem generis and addressed giving effect to both the particular and the general words. Arkansas Times, 37 F.4th at 1393. The Treasurer proposes the Court read “such language in context of the surrounding words...” See Defendant’s Response, pg. 14.

45. Taking into consideration the surrounding words and the particular and general words, the Court finds Plaintiff has established a substantial likelihood of success on the merits as to Okla. Const. Art. 2, §7, and the vagueness of the Act.

iv. VIOLATION OF OKLA. CONST. ART. 5, §46 (SPECIAL LAW)

46. Plaintiff alleges the Act is a special law due to 74 O.S. §12002(D)(2) requirement that any person that files suit for any claim in connection with the Act is liable for paying the costs and attorney fees of the person or governmental entity sued. The provision appears to award attorney fees to the governmental entity or governmental employee regardless of whether judgment is in favor or against the governmental entity or employee.

47. Plaintiff states the Act creates a special category of declaratory judgment law wherein a party who seeks to challenge the Act must pay the Defendant’s attorney fees and costs.

48. Plaintiff also asserts the above provisions create a barrier to the court for all plaintiffs and potentially the financial companies. The Court has previously addressed Plaintiff's standing in this matter, and his ability to pursue legal action under the Act.

49. The Court denies a temporary injunction as to this request but allows this claim to proceed for a final determination on the merits as to the declaratory judgment attorney fee and the barrier to the court issues.

B. IRREPARABLE HARM

50. As to irreparable harm, the Court finds that divesture or transfer of assets and investments has the potential to affect the financial soundness of the investment accounts. If the OPERS Board reconsider their decision and follow the Treasurer's interpretation, the system's assets could decrease or increase in value and potentially substantial alter the stability of the investment funds prior to a final determination by the Court.

51. Oklahoma law defines harm as "irreparable" where it "is incapable of being fully compensated by money damages," or where the measure of damages is too "speculative" to calculate. Tulsa Order of Police Lodge No. 93 v. City of Tulsa, 2001 OK CIV APP 153, ¶28, 39 P.3d 152, 159. For temporary injunction purposes, most courts have held that a threatened deprivation of a constitutional right is itself irreparable harm, and that no further showing of irreparable harm is required. See, e.g., Elrod v. Burns, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); Kikumura v. Hurley, 242 F.3d 950, 963 (10th Cir. 2001).

52. Because Plaintiff's challenges allege a violation of constitutional rights, this Court finds that Plaintiff has established a threat of irreparable harm should the Act be enforced.

C. BALANCE OF HARDSHIPS AND PUBLIC INTEREST

53. Turning to the remaining temporary injunction factors, this Court finds that Plaintiff has established by clear and convincing evidence that the threat of injury outweighs any threatened harm to the Defendant, and further, that a temporary injunction would serve the public interest. See, e.g., ACLU v. Johnson, 194 F.3d 1149, 1163 (10th Cir. 1999) (holding threatened injury to plaintiffs' constitutionally protected rights outweighed "whatever damage the preliminary injunction may cause Defendants' inability to enforce what appears to be an unconstitutional statute"); Entm't Merchs. Ass'n v. Henry, No. CIV-06-675-C, 2006 WL 2927884, at *3 (W.D. Okla. Oct. 11, 2006) (noting it is always in the public interest to protect constitutional liberties).


III. CONCLUSION AND ORDER

The Court hereby grants temporary injunction against the enforcement of the Oklahoma Energy Discrimination Act of 2022, based on Plaintiff's claims of Violation of Exclusive Benefit and Vagueness. Temporary injunction is denied as to Plaintiff's claims of Freedom of Speech and Special Law/Barrier to the Court.

Defendant, his employees, agents, and successor in office are hereby temporarily enjoined from enforcing the provisions of the Oklahoma Energy Discrimination Act of 2022 until and unless the Court orders otherwise.

IT IS SO ORDERED.

DATED this 7th day of May 2024.

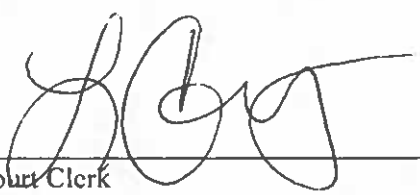

SHEILA D. STINSON
JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

I hereby certify that on May 7, 2024, I mailed by regular mail a true and correct copy of this Order to the following persons and filed a true and correct copy in this case.

Collin Walke
Hall Estill
100 N. Broadway, Ste. 2900
Oklahoma City, OK 73102

Cheryl Plaxico
Plaxico Law Firm PLLC
P.O. Box 298
Oklahoma City, OK 73101


Deputy Court Clerk



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

OCT 29 2024

DON KEENAN,)
)
 Plaintiff,)
)
 v.)
)
 TODD RUSS, in his capacity as the)
 TREASURER OF THE STATE OF)
 OKLAHOMA,)
)
 Defendant.)

RICK WARREN
COURT CLERK
112 _____

Case No. CV-2023-3021

JOURNAL ENTRY

On the 6th day of September, 2024, plaintiff, Don Keenan's ("Plaintiff"), *Motion for Summary Judgment* came before the Court. Plaintiff appeared by and through counsel of record, Collin R. Walke. Defendant appeared by and through counsel of record, Garry Gaskins and Will Flanagan. The Court, having reviewed the *Motion for Summary Judgment, Response, and Reply* to the same, as well as having reviewed the parties' respective supplemental briefs, and having heard argument, hereby FINDS, ORDERS, ADJUDGES, and DECREES as follows:

1. Plaintiff's *Motion for Summary Judgment* is sustained.
2. This *Journal Entry* incorporates by reference the Court's October 25, 2024, *Order as to Plaintiff's Motion for Summary Judgment*.
3. Plaintiff is granted summary judgment on all claims in his Petition.
4. There being no remaining issues before the Court, this is a final order.

IT IS SO ORDERED.

Sheila Stom

JUDGE OF THE DISTRICT COURT
10/29/24

APPROVED AS TO FORM:



Collin R. Walke, OBA #22328

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ATTORNEYS FOR DEFENDANT

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY OCT 25 2024
STATE OF OKLAHOMA**

**RICK WARREN
COURT CLERK
85 _____**

DON KEENAN,

Plaintiff,

v.

Case No: CV-2023-3021

TODD RUSS, in his capacity as the
TREASURER OF THE STATE OF
OKLAHOMA,

Defendant.

**ORDER AS TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

On September 6, 2024, Plaintiff's Motion for Summary Judgment came before this Court for consideration. Plaintiff appeared by and through Collin Walke of Hall Estill. Defendant appeared by and through Garry Gaskins and Will Flanagan of the Office of the Attorney General, State of Oklahoma. Following oral argument of counsel and review of the pleadings and exhibits submitted, the Court took the matter under advisement. The Court additionally requested supplemental briefing due to recent caselaw and set a deadline of September 16, 2024. Having considered the arguments and evidence presented, for the reasons set forth below, Plaintiff's Motion for Summary Judgment is SUSTAINED.

I. INTRODUCTION

1. The Oklahoma Energy Discrimination Elimination Act of 2022 ("Act"), 74 O.S. §12001, et seq., was enacted by HB 2034 of the 58th Oklahoma Legislature and became effective on November 1, 2022.
2. The Act prohibits government retirement systems from investing in companies that boycott energy companies. A "Boycott energy company" is defined as a company:

[W]ithout an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

- a. engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil-fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or
- b. does business with a company described by subparagraph a of this paragraph.

74 O.S. 12002(A)(1).

3. The Oklahoma State Treasurer is directed to “prepare and maintain and provide to each state governmental entity a list of financial companies that boycott energy companies. In maintaining the list, the Treasurer may:

- a. review and rely, as appropriate in the Treasurer's judgment, on publicly available information regarding financial companies including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities, and
- b. request written verification from a financial company that it does not boycott energy companies and rely, as appropriate in the Treasurer's judgment and without conducting further investigation, research, or inquiry, on a financial company's written response to the request.”

74 O.S. 12003(A)(1)

4. Under the Act, any financial institution that does business with the State must verify in writing that it does not boycott energy companies and will not boycott energy companies during the institution's contract with the State. See 74 O.S. 12003(A)(2).

5. A financial company that fails to provide to the Treasurer a written verification before the 61st day after receiving the request from the Treasurer is presumed to be boycotting energy companies. See 74 O.S. §12003(A)(2)

6. The governmental entity is to send a written notice to the financial company warning that it may become subject to divestment and offer the company the opportunity to clarify its activities. If the financial company fails to divest from boycotting energy companies, then the State of Oklahoma will terminate its relationship with the financial company and sell, redeem,

divest, or withdraw State's funds held by the company in a staggered schedule. See 74 O.S. §12003(C).

7. A state government entity may "delay the schedule for divestment" only to the extent that the state governmental entity determines, in the state governmental entity's good-faith judgment, and consistent with the entity's fiduciary duty, that divestment from listed financial companies will likely result in a loss in value or an aggregate expected deviation from its benchmark-aware strategy. See 74 O.S. §12003(D)(3). Before the state government entity may cease divesting due to a loss in value, it must notify the State Treasurer, the presiding officer of each house of the legislature, and the Attorney General, and the entity must set forth, by clear and convincing evidence, its reason and justification. See 74 O.S. §12003(F).

8. Plaintiff filed suit on December 21, 2023, and requesting Declaratory Judgment determining the Act unconstitutional

9. The Court previously granted Plaintiff's Motion for Partial Summary Judgment as to the allegations that the Act violates Oklahoma Constitution Art. 23, §12 (Exclusive Purpose of Benefits) and the Act violates Oklahoma Constitution Art. 2, §7 (Due Process) by being unconstitutionally vague.

10. Plaintiff now requests Summary Judgment as to the remaining claims: 1. The Act violates Oklahoma Constitution Art. 2 §22 (Freedom of Speech), 2. the Act violates Oklahoma Constitution Art. 5, §46 (Special Law) and 3. the Act violates Art. 2, §6 (Impermissible Barrier to the Courts).

11. The Court adopts and incorporates its findings contained in its Order as to Plaintiff's Motion for Temporary Injunction filed on May 7, 2024, and the Journal Entry as to Plaintiff's Motion for Partial Summary Judgment filed on September 20, 2024.

II. FINDINGS

A. SUMMARY JUDGMENT

12. Summary judgment is appropriate only when there is no genuine controversy as to any material fact, and the moving party is entitled to judgment as a matter of law. Rickard v. Coulimore, 2022 OK 9, ¶4, 505 P.3d 920.

B. VIOLATION OF OKLA. CONST. ART. 2, §22 (FREEDOM OF SPEECH)

13. Plaintiff asserts the Act is an unconstitutional infringement of freedom of speech.

14. The Oklahoma Constitution states “[N]o law shall be passed to restrain or abridge the liberty of speech...” Okla. Const. Art 2, §22.

15. Plaintiff relies on federal case law primarily involving legislation prohibiting a boycott of Israel. As Oklahoma caselaw has not addressed this issue, the Court looks to Koontz v. Watson, 283 F.Supp.3d 1007 (D. Kan. 2018) and Arkansas Times LP v. Waldrip as Trustee of University of Arkansas Board of Trustees, 37 F.4th 1386 (8th Cir. 2022). In Arkansas Times, the Eighth Circuit looked to “what the [Act] bans: protected boycott-related activity, or non-expressive commercial decisions.” Arkansas Times, 37 F.4th at 1392. This Court must look to whether the Act is prohibiting purely commercial, non-expressive conduct. Id at 1394.

16. The Freedom of Speech does not “just prevent outright prohibition on speech; they also prohibit the government from imposing unconstitutional conditions that chill or deter speech.” Id. at 1391. “The government imposes an unconstitutional condition when it requires someone to give up a constitutional right in exchange for a government benefit.” Dolan v. City of Tigard, 512 U.S. 374, 385, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994). This includes making government benefits contingent on endorsing a particular message or agreeing not to engage in protected speech. Arkansas Times, 37 F.4th at 1391.

17. The *Koontz* Court addressed the State of Kansas requiring a written verification that Plaintiff did not boycott Israel. The court stated to “determine whether a state is infringing on an independent contractor’s rights under the First Amendment, courts use the same guidelines developed in Pickering v. Board of Education of Township High School District 205, Will County, Illinois, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed. 2d 811 (1968). See Koontz, 283 F.Supp.3d at 1020.

18. The *Pickering* test requires the plaintiff to show that the First Amendment protects the conduct that results in a denied governmental benefit. If so shown, the government must then present a legitimate countervailing government interest that is sufficiently strong to justify its encroachment. See Koontz, 283 F.Supp.3d at 1021. The government must show “the speech’s ‘necessary impact on the actual operation’ of the government outweighs the interests of the speakers and their audiences.” *Id.*

19. The U.S. Supreme Court has stated while “States have broad power to regulate economic activity, we do not find a comparable right to prohibit peaceful political activity such as that found in the boycott” of the subject merchants. NAACP v. Claiborne Hardware Co., 458 U.S. 886, 907, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982). A State’s “regulatory power over boycotts is limited when the boycott’s main purpose is to influence governmental action.” *Id.* at 914.

20. The government can regulate conduct under the First Amendment so long as the conduct is not inherently expressive. Rumsfeld v. Forum for Academic & Institutional Rights, 547 U.S. 47, 65-66, 126 S.Ct. 1297, 164 L.Ed. 156 (2006).

21. Since the initial briefing in this matter, a permanent injunction was issued in the Western District of Missouri involving environmental, social, and corporate governance administrative rules. Securities Industry and Financial Markets Association v. Ashcroft, No. 23-cv-04154-SRB, 2024 WL 3842112 (W.D. Mon. Aug. 14, 2024). The *Ashcroft* administrative rules

required financial professionals to obtain written consent from their clients using a “social objective” or other “nonfinancial objective” when making investment recommendations or advice. Id. at *1. While the Missouri rules differ from the Oklahoma Act as to procedural requirements and application, the Court finds *Ashcroft* persuasive as to the issue of commercial speech and the objective of similar legislation.

22. The *Ashcroft* court applied the level of scrutiny found in Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York, 447 U.S. 557, 563 (1980), to evaluate whether the Missouri disclosure requirements violated the First Amendment of the U.S. Constitution. The *Ashcroft* applied intermediate scrutiny by finding the administrative rules were not uncontroversial. Id. at pg. 17. Judge Bough cited to Secretary of State of Missouri Ashcroft’s statements as to ESG investments. The *Ashcroft* court found the statements discussing political priorities are not uncontroversial and may be considered in determining the appropriate level of scrutiny to be applied. Id.

23. The *Ashcroft* court applied the level of scrutiny under *Central Hudson*.

In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Central, 447 U.S. 557, 566.

24. Based on the text of the Act and the Defendant’s statements since the enactment of the Act, the Court finds the text and statements are not uncontroversial and should be considered with intermediate scrutiny as set forth in *Central*. See Letter from Defendant dated Sept. 14, 2023,

Exb. 1 to *Plaintiff's Reply to Motion for Summary Judgment*, and Transcript of Interim Study held on Oct. 11, 2023, Exb. 1 to *Plf's Motion for Summary Judgment*.

25. The Court finds the Act is more extensive than is necessary to serve the governmental interest. Defendant asserts the "Act is designed to ensure that the private entities managing State retirement money are focused solely on financial return." *See Def's Supplemental Brief* filed Sept. 16, 2024, pg. 5.

26. The Court finds for this stated governmental interest, the Act extends beyond what is necessary to serve a governmental interest and does not survive intermediate scrutiny by the limitations imposed on commercial speech.

C. VIOLATION OF OKLA. CONST. ART. 2, §6 (BARRIER TO THE COURT) AND ART.5, §46 (SPECIAL LAW)

27. Article 2, §6 of the Oklahoma Constitution states, "The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice."

28. Art. 5, §46 of the Oklahoma Constitution prohibits special laws "[r]egulating the practice or jurisdiction of, or changing the rules of evidence in judicial proceedings or inquiry before the courts ..."

29. The Oklahoma Supreme Court has addressed the special laws in relation to barriers to the Court in *Zeier v. Zimmer, Inc.*, 2006 OK 98, 152 P.3d 861.

The clear language of art. 2, §6 requires that the courts must be open to all on the same terms without prejudice. The framers of the Constitution intended that all individuals, without partiality, could pursue an effective remedy designed to protect their basic and fundamental rights. Although we recognize that the Legislature may facilitate speedy resolution of differences, legislation cannot be used to deny the constitutional guarantee

of court access—a fundamental right. Therefore, this Court strictly scrutinizes actions which deny such opportunity.

Access to courts must be available to all through simple and direct means and the right must be administered in favor of justice rather than being bound by technicalities. Claimants may not have the fundamental right of court access withheld for nonpayment of some liability or conditioned on coercive collection devices.

Zeier, 2006 OK 98, ¶¶25-26, 152 P.3d at 872–73

30. Art. 5, §46 of the Oklahoma Constitution prohibits special laws “[r]egulating the practice or jurisdiction of, or changing the rules of evidence in judicial proceedings or inquiry before the courts ...”

31. Plaintiff alleges the Act is a special law and barrier to the courts due to 74 O.S. §12002(D)(2) requirement that any person that files suit for any claim in connection with the Act is liable for paying the costs and attorney fees of the person or governmental entity sued. The provision appears to award attorney fees to the governmental entity or governmental employee regardless of whether judgment is in favor or against the governmental entity or employee.

32. Additionally, Plaintiff argues that 74 O.S. §12002(D)(1) prohibits any person or entity from suing under the Act for any claim or private cause of action.

33. Plaintiff states the Act creates a special category of declaratory judgment law wherein a party who seeks to challenge the Act must pay the Defendant’s attorney fees and costs.

34. The Court must determine if the Act creates a separate class which is treated differently as to declaratory judgments.

The terms of art. 5, § 46 command that court procedure be symmetrical and apply equally across the board for an entire class of similarly situated persons or things. In a special laws attack under art. 5, § 46, the only issue to be resolved is whether a statute upon a subject enumerated in the constitutional provision targets for different treatment less than an entire class of similarly

situated persons or things. The test is whether the provision fits into the structured regime of established procedure as part of a symmetrical whole. If an enactment injects asymmetry, the § 46 interdiction of special law has been offended. [Emphasis removed]

Zeier, 2006 OK 98, ¶12.

35. In other classes of declaratory judgment actions, Oklahoma statutes do not authorize the award of an attorney fee to the prevailing party. “There is no controversy that the statutory provisions concerning declaratory judgment, 12 O.S.1981 §§ 1651 through 1657, do not authorize the award of an attorney fee to the prevailing party.” Cory v. City of Norman, 1988 OK CIV APP 7, ¶ 2, 757 P.2d 851, 851

36. The Act prohibits private causes of actions and assesses attorney fees against any individual or entity challenging the statute, with no consideration of whether they are successful or not in their challenge. The Act creates an unconstitutional monetary barrier to the access to courts guaranteed by Art. 2, § 6 of the Oklahoma Constitution. ¹

37. Furthermore, the Act creates a special law by creating a class of litigants treated differently than similarly situated persons or entities in violation of Art. 5, §46 of the Oklahoma Constitution.

¹ The Oklahoma courts recognize

[T]hat a statute is the solemn act of the Legislature. In construing the constitutionality of a statute, we are not authorized to consider its propriety, wisdom, or practicability as a working proposition. Those questions are clearly and definitely established by our fundamental law to a certainty as functions of the legislative department. We uphold the legislative enactment unless the statute is clearly, palpably and plainly inconsistent with the constitution. This Court has a duty to interpret statutes to make their application constitutional rather than unconstitutional” *Zeier v. Zimmer, Inc.*, 152 P.3d 861, 866 (Okla. 2007)

III. CONCLUSION

IT IS THEREFORE ORDERED, ADJUGED AND DECREED that, for the reasons and grounds stated herein, the Plaintiff's Motion for Summary Judgment is sustained.

IT IS SO ORDERED.

DATED this 25th day of October 2024.



SHEILA D. STINSON
JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

I hereby certify that on October 25, 2024, I mailed by regular mail a true and correct copy of this Order to the following persons and filed a true and correct copy in this case.

Collin Walke
Hall Estill
100 N. Broadway, Ste. 2900
Oklahoma City, OK 73102

Garry Gaskins
Will Flanagan
Office of the Attorney General
State of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105



Deputy Court Clerk

Exhibit “B”—Summary of the Case

In 2022, Oklahoma enacted the Energy Discrimination Elimination Act (“the Act”), codified at 74 O.S. §§ 12001–06. The Act accomplishes two objectives. First, it protects State retirement funds by ensuring that the private entities managing those funds do not subordinate their fiduciary duty to activist political goals. It accomplishes this by requiring State retirement systems to divest their funds from the control of financial companies that boycott energy companies according to the statutory definition. However, the Act exempts governmental entities from its requirements if the entity determines that divestment is inconsistent with its fiduciary duties related to the investment of its funds. Second, it supports the State’s oil and gas industry by prohibiting governmental entities from entering into contracts of a certain size with contractors that boycott energy companies.

Plaintiff—asserting solely a taxpayer claim for standing—sued the State Treasurer alleging that the Act violated a host of constitutional provisions. He claimed that the Act violated the Oklahoma Constitution’s requirement that the assets of public retirement systems be used for the exclusive purpose of providing for benefits to the system, OKLA. CONST. art. 23, § 12; that it was unconstitutionally vague, OKLA. CONST. art. 2, § 7; that it violated constitutional free speech protections, OKLA. CONST. art. 2, § 22, and that the Act was an impermissible special law, Okla. Const. art. 5, § 46, that created an unconstitutional barrier to courts, Okla. Const. Art. 2, § 6. The district court granted Plaintiff summary judgment on all five constitutional claims.

This decision was erroneous on all five claims. Plaintiff lacks taxpayer standing. The Act explicitly ensures that public retirement systems are managed for the exclusive benefit of pensioners. The Act’s definition of boycotting is more than sufficient to not be unconstitutionally vague. The Act regulates conduct and not speech, thus, freedom of speech is not implicated. Finally, the Act is not an impermissible special law and is not an unconstitutional barrier to courts.

Exhibit “C”—Issues to be raised on appeal

- (1) Whether the district court erred in granting summary judgment against the State.
- (2) Whether Plaintiff possesses taxpayer standing when the challenged Act does not appropriate funds and the Petition does not include any allegations of the illegal expenditure of funds.
- (3) Whether the Oklahoma Energy Discrimination Elimination Act violates Article 23, Section 12 of the Oklahoma Constitution.
- (4) Whether the Oklahoma Energy Discrimination Elimination Act is unconstitutionally vague in violation of Article 2, Section 7 of the Oklahoma Constitution.
- (5) Whether the Oklahoma Energy Discrimination Elimination Act unconstitutionally infringes on free speech in violation of Article 2, Section 22 of the Oklahoma Constitution.
- (6) Whether the Oklahoma Energy Discrimination Elimination Act is a special law in violation of Article 5, Section 46 of the Oklahoma Constitution.
- (7) Whether the Oklahoma Energy Discrimination Elimination Act is a barrier to courts in violation of Article 2, Section 6 of the Oklahoma Constitution.