

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

PEGGY FONTENOT,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-16-1339-W
)	
E. SCOTT PRUITT, ATTORNEY)	
GENERAL OF OKLAHOMA, in his)	
official capacity,)	
)	
Defendant.)	

**ORDER STAYING ENFORCEMENT OF 78 O.S. §§ 71-75
PURSUANT TO STIPULATION OF THE PARTIES**

Pursuant to the Stipulation to Stay Enforcement of Oklahoma Statute Title 78, §§ 71-75 ("Stipulation"), filed by the parties on January 3, 2017, see Doc. 16, the Court FINDS the parties have stipulated to the following facts:

1. On November 22, 2016, plaintiff Peggy Fontenot filed a Complaint for Declaratory and Injunctive Relief ("Complaint") in the United States District Court for the Western District of Oklahoma. See Doc. 1. The Complaint seeks (a) a declaration that Oklahoma's American Indian Arts and Crafts Sales Act of 1974 ("Art Sales Act" or "Act"), as amended, 78 O.S. §§ 71-75, is unconstitutional, (b) a permanent injunction against the defendant, E. Scott Pruitt, Attorney General of Oklahoma, in his official capacity ("Attorney General"), enjoining the Attorney General from enforcing the provisions of the Art Sales Act, (c) an award of attorney fees, costs and expenses and (d) any further legal and equitable relief deemed proper by the Court.

2. Fontenot has alleged in her Complaint that the Art Sales Act violates (a) the First Amendment to the United States Constitution because the Act is a content-and speaker-

based restriction on speech, (b) the "dormant" Commerce Clause, U.S. Const., art. I, § 8, cl. 3, because the Act discriminates against, and substantially burdens, interstate commerce, (c) the Supremacy Clause, U.S. Const., art. VI, cl. 2, because the Act conflicts with the federal Indian Arts and Crafts Act, 25 U.S.C. § 305e, and (d) the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution because the Act impermissibly infringes upon Fontenot's right to earn a living and arbitrarily distinguishes between American Indian artists.

3. The Attorney General filed an Answer on December 14, 2016. See Doc. 12.

4. The Art Sales Act regulates under what circumstances art and crafts in Oklahoma may be marketed or described as "American Indian-made."

5. Fontenot has alleged that under sections 73 and 74 of the Art Sales Act, only artists who are citizens or enrolled members of an American Indian tribe recognized by the Bureau of Indian Affairs of the United States Department of the Interior may describe or market their art and crafts as American Indian-made.

6. Because, according to the Complaint, Fontenot is an artist who is a member of a state-recognized tribe—the Patawomeck Indian Tribe of Virginia—rather than a member of a federally recognized tribe, Fontenot has alleged that the Art Sales Act prohibits her from marketing and describing her art in Oklahoma as American Indian-made.

Based on the parties' Stipulation, the Court RECOGNIZES and CONFIRMS:

1. In the interest of judicial economy and to avoid the need for preliminary litigation before a final judgment on the merits, Fontenot has requested and the Attorney General has agreed that neither he nor his agents, representatives and/or employees will enforce the provisions of the Art Sales Act against Fontenot.

2. The Attorney General has further agreed not to enforce the provisions of the Art Sales Act against any other person who may otherwise lawfully market his or her art as "American Indian-made" consistent with the federal Indian Arts and Crafts Act, 25 U.S.C. § 305e.

3. Despite the parties' Stipulation, the Attorney General makes no admission concerning the merits of Fontenot's claims as set forth in her Complaint, does not concede that Fontenot is likely to succeed on the merits of those claims and maintains that Fontenot is not entitled to the final relief she has requested in her Complaint.

ENTERED this 4th day of January, 2017.


LEE R. WEST
UNITED STATES DISTRICT JUDGE