



Supremacy Clause, U.S. Const., art. VI, cl. 2, because the Act fatally 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 because the Act impermissibly infringes upon Ms. Fontenot's right to earn a living and arbitrarily distinguishes between American Indian artists.

3. Defendant filed an Answer on December 14, 2016.

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

5. Ms. Fontenot alleges that under the Art Sales Act, § 73-74, 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 or crafts as American Indian-made.

6. Because, according to the Complaint, Ms. 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, Ms. Fontenot alleges that the Art Sales Act prohibits her from marketing and describing her art in Oklahoma as American Indian-made.

IT IS HEREBY STIPULATED by and between Plaintiff and Defendant through their attorneys of record here, as follows:

In the interest of judicial economy and avoiding the need for preliminary litigation before a final judgment on the merits, Plaintiff has requested and Defendant has agreed that Defendant, his agents, representatives, and employees, will not enforce Okla. Stat. tit. 78, §§ 71-75 against Plaintiff. Defendant further agrees not to enforce Okla. Stat. tit. 78, §§ 71-75 on any other person that may otherwise lawfully market their art as "American Indian-made" consistent with

the federal Indian Arts and Crafts Act, 25 U.S.C. § 305e. In so stipulating, Defendant makes no admission concerning the merits of Plaintiff's claims, does not concede that Plaintiff is likely to succeed on the merits, and maintains that Plaintiff is not entitled to the final relief requested in her Complaint.

DATED: January 3, 2017.

By: s/ CALEB R. TROTTER

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2017, I electronically transmitted the foregoing to the Clerk of the Court using the ECF System for filing. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Mithun Mansinghani

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s/ CALEB R. TROTTER  
CALEB R. TROTTER  
Attorney for Plaintiff Peggy Fontenot

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

PEGGY FONTENOT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	No. 5:16-cv-01339-W
E. SCOTT PRUITT, ATTORNEY	)	
GENERAL OF OKLAHOMA, in his	)	
official capacity,	)	
	)	
Defendant.	)	
	)	
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**[PROPOSED] ORDER STAYING  
ENFORCEMENT OF OKLA. STAT. TIT. 78, §§ 71-75  
PURSUANT TO STIPULATION OF THE PARTIES**

A stipulation was entered into between the parties [Dkt No. 16] with reference to the following facts:

1. On November 22, 2016, Plaintiff Peggy Fontenot filed a Complaint for Declaratory and Injunctive Relief in this Court. The Complaint seeks a declaration that Oklahoma’s American Indian Arts and Crafts Sales Act (Art Sales Act), Okla. Stat. tit. 78, §§ 71-75, is unconstitutional; entry of a permanent injunction against Defendant from enforcing the law; an award of attorney fees, costs, and expenses; and any further legal and equitable relief deemed proper by the Court.

2. Ms. Fontenot alleges that the Art Sales Act violates: (a) the First Amendment to the United States Constitution because the Act is a content- and speaker-based speech restriction; (b) the “dormant” Commerce Clause, U.S. Const., art. I, § 8, cl. 3, because the Act

discriminates against interstate commerce and excessively burdens interstate commerce; (c) the Supremacy Clause, U.S. Const., art. VI, cl. 2, because the Act fatally 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 because the Act impermissibly infringes upon Ms. Fontenot's right to earn a living and arbitrarily distinguishes between American Indian artists.

3. Defendant filed an Answer on December 14, 2016.

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

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6. Because, according to the Complaint, Ms. 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, Ms. Fontenot alleges that the Art Sales Act prohibits her from marketing and describing her art in Oklahoma as American Indian-made.

IT IS HEREBY ORDERED PURSUANT TO THE STIPULATION:

In the interest of judicial economy and avoiding the need for preliminary litigation before a final judgment on the merits, Plaintiff has requested and Defendant has agreed that Defendant, his agents, representatives, and employees, will not enforce Okla. Stat. tit. 78, §§ 71-75 against Plaintiff. Defendant further agrees not to enforce Okla. Stat. tit. 78, §§ 71-75 on any other person that may otherwise lawfully market their art as "American Indian-made" consistent with

the federal Indian Arts and Crafts Act, 25 U.S.C. § 305e. In so stipulating, Defendant makes no admission concerning the merits of Plaintiff's claims, does not concede that Plaintiff is likely to succeed on the merits, and maintains that Plaintiff is not entitled to the final relief requested in her Complaint.

ENTERED this \_\_\_\_\_ day of January, 2017.

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LEE R. WEST  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2017, I electronically transmitted the foregoing to the Clerk of the Court using the ECF System for filing. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Mithun Mansinghani

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s/ CALEB R. TROTTER  
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