

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

CHAMBER OF COMMERCE OF THE UNITED)
STATES OF AMERICA; OKLAHOMA STATE)
CHAMBER OF COMMERCE AND ASSOCIATED)
INDUSTRIES; GREATER OKLAHOMA CITY)
CHAMBER OF COMMERCE; METROPOLITAN)
TULSA CHAMBER OF COMMERCE, INC.;)
OKLAHOMA RESTAURANT ASSOCIATION;)
and OKLAHOMA HOTEL AND LODGING)
ASSOCIATION,)

Plaintiffs,)

vs.)

Case No. CIV-08-109-C

BRAD HENRY, in his official capacity as Governor of)
the State of Oklahoma; W.A. DREW EDMONDSON,)
in his official capacity as Attorney General of the State)
of Oklahoma; KEITH MCARTOR, STAN EVANS,)
MARK ASHTON, ANN CONG-TANG, ELVIA)
HERNANDEZ, RITA MAXWELL, TERESA)
RENDON, SAMMIE VASQUEZ, SR., JUANITA)
WILLIAMS, in their official capacities as Members)
of the Oklahoma Human Rights Commission; and)
THOMAS E. KEMP, JR., JERRY JOHNSON, and)
CONSTANCE IRBY, in their official capacities as)
Members of the Oklahoma Tax Commission,)

Defendants.)

**JOINT MOTION FOR ENTRY OF DECREE FOR
PERMANENT PROSPECTIVE
INJUNCTIVE RELIEF AND JUDGMENT**

Pursuant to LCvR 7.1(h), Plaintiffs the Chamber of Commerce of the United States of America *et al.* and Defendants Brad Henry *et al.* (jointly, the “Parties”), by and through their respective attorneys, hereby move this Court to enter a Decree for Permanent Prospective Injunctive Relief and Judgment in the forms attached hereto as Exhibits 1 and

2. The Parties have resolved their disputes and have agreed to entry of the Decree and Judgment.

WHEREFORE, the Parties respectfully request that their motion be granted and that the Court enter the Decree and Judgment, thereby concluding this matter.

Submitted this 18th day of December 2012.

/s/ M. Daniel Weitman

M. DANIEL WEITMAN, OBA #17412

Oklahoma Attorney General's Office

313 N.E. 21st Street

Oklahoma City, OK 73105

Telephone: (405) 521-3921

Facsimile: (405) 521-4518

Email: dan.weitman@oag.ok.gov

-and-

/s/ Larry D. Patton (with permission)

LARRY D. PATTON, OBA #6963

Senior Assistant General Counsel

SEAN R. McFARLAND, OBA #13729

Assistant General Counsel

OKLAHOMA TAX COMMISSION

120 N. Robinson, Suite 2000W

Oklahoma City, OK 73102

Telephone: (404) 319-8550

Facsimile: (405) 601-7144

Email: lpatton@oktax.state.ok.us

Email: smcfarland@oktax.state.ok.us

Attorneys for Defendants

Of Counsel:

Robin S. Conrad
Shane B. Kawka
NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

/s/ Phillip G. Whaley

*(Signed by filing attorney with permission of
Plaintiff's attorney)*

PATRICK M. RYAN, OBA #7864
PHILLIP G. WHALEY, OBA #13371
DANIEL G. WEBBER, JR., OBA #16332
RYAN WHALEY COLDIRON SHANDY PC
900 Robinson Renaissane
119 North Robinson Avenue
Oklahoma City, Oklahoma 73102
Telephone: (405) 239-6040
Facsimile: (405) 239-6766
Email: pwhaley@ryanwhaley.com

-and-

Carter G. Phillips, DC No. 264176
appearing pro hac vice
Eric A. Shumsky, DC No. 477926
appearing pro hac vice
Quin M. Sorenson, DC No. 501292
appearing pro hac vice
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711
Attorney for Plaintiff

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

CHAMBER OF COMMERCE OF THE UNITED)
STATES OF AMERICA; OKLAHOMA STATE)
CHAMBER OF COMMERCE AND ASSOCIATED)
INDUSTRIES; GREATER OKLAHOMA CITY)
CHAMBER OF COMMERCE; METROPOLITAN)
TULSA CHAMBER OF COMMERCE, INC.;)
OKLAHOMA RESTAURANT ASSOCIATION;)
and OKLAHOMA HOTEL AND LODGING)
ASSOCIATION,)

Plaintiffs,)

vs.)

Case No. CIV-08-109-C

BRAD HENRY, in his official capacity as Governor of)
the State of Oklahoma; W.A. DREW EDMONDSON,)
in his official capacity as Attorney General of the State)
of Oklahoma; KEITH MCARTOR, STAN EVANS,)
MARK ASHTON, ANN CONG-TANG, ELVIA)
HERNANDEZ, RITA MAXWELL, TERESA)
RENDON, SAMMIE VASQUEZ, SR., JUANITA)
WILLIAMS, in their official capacities as Members)
of the Oklahoma Human Rights Commission; and)
THOMAS E. KEMP, JR., JERRY JOHNSON, and)
CONSTANCE IRBY, in their official capacities as)
Members of the Oklahoma Tax Commission,)

Defendants.)

DECREE FOR PERMANENT PROSPECTIVE INJUNCTIVE RELIEF

Upon consideration of the record in this case and hearing agreement of the parties,
the Court enters this decree awarding judgment in part to the Defendants, and judgment in
part to the Plaintiffs and granting a permanent injunction in Plaintiffs' favor.

Exhibit 1

BACKGROUND

1. In 2007, the Oklahoma Legislature passed the Oklahoma Taxpayer and Citizen Protection Act of 2007 (hereinafter referred to as HB 1804). HB 1804 contained an effective date of November 1, 2007.

2. On February 1, 2008, Plaintiffs instituted this lawsuit challenging Sections 7(b), 7(c), and 9 of HB 1804 as preempted under federal law, and seeking declaratory and injunctive relief. Section 7(b) of HB 1804, codified at 25 O.S. §1313(a) and (b), requires persons contracting with the State to use the employment authorization system known as E-Verify; Section 7(C), codified at 25 O.S. §1313(c), creates a cause of action for discrimination against employers who terminate an authorized employee while retaining an unauthorized employee; Section 9, codified at 68 O.S. §2385.32, requires businesses to verify individual independent contractors' authorization status and creates a withholding for work performed by individual independent contractors.

3. The complaint named as Defendants the then-current Governor of the State of Oklahoma (Brad Henry), Attorney General of the State of Oklahoma (Drew Edmondson), members of the Oklahoma Human Rights Commission in their official capacities (Keith McArtor, Stan Evans, Mark Ashton, Ann Cong-Tang, Elvia Hernandez, Rita Maxwell, Teresa Rendon, Sammie Vasquez, Sr., Juanita Williams), and members of the Oklahoma Tax Commission in their official capacities (Thomas E. Kemp, Jr., Jerry Johnson, Constance Irby).

4. On June 4, 2008, this Court entered a preliminary injunction enjoining the Defendants from enforcing the challenged laws.[Doc. 59 and 60].

5. This Court's order was appealed to the U.S. Court of Appeals for the Tenth Circuit, in consolidated case numbers 08-6127 and 08-6128. On February 2, 2010, the Tenth Circuit issued its ruling affirming the granting of the preliminary injunction against enforcement of HB 1804 § 7(c) (25 O.S. § 1313(c)) and HB 1804 § 9 (68 O.S. § 2385.32) by the Oklahoma Human Rights Commissioners and the Oklahoma Tax Commissioners. However, the appeals court vacated the preliminary injunction against enforcement of HB 1804 § 7(b) (25 O.S. §1313(a) and (b)) by the Oklahoma Attorney General. The mandate issued on April 27, 2010.

6. On May 26, 2011, the U.S. Supreme Court issued its ruling in *Chamber of Commerce of the United States of America v. Whiting*, 131 S. Ct. 1968 (2011), holding that an Arizona law requiring employers to use E-Verify was not preempted by federal law.

7. In its 2011 session, the Oklahoma legislature passed SB 763 (uncodified) which directed that, by July 1, 2012, all duties and responsibilities of the Oklahoma Human Rights Commission would be transferred to the Oklahoma Attorney General.

8. In the Oklahoma state elections of 2010, Governor Brad Henry was succeeded by The Honorable Mary Fallin, and Attorney General Drew Edmondson was succeeded by Scott Pruitt.

ORDERS

Based on the record in this matter and the agreement of the parties, the Court enters the following orders:

9. Defendants Keith McArtor, Stan Evans, Mark Ashton, Ann Cong-Tang, Elvia Hernandez, Rita Maxwell, Teresa Rendon, Sammie Vasquez, Sr., and Juanita Williams, in their official capacities as members of the Oklahoma Human Rights Commission, are hereby dismissed. Attorney General Scott Pruitt, in his official capacity as Attorney General for the State of Oklahoma, is ordered substituted in place of the dismissed parties.

10. The Honorable Mary Fallin, in her official capacity as Governor of the State of Oklahoma, is ordered substituted for Brad Henry.

11. Judgment to issue in favor of the Defendants on Plaintiffs' challenge to HB 1804 §7(b) (25 O.S. §1313(a) and (b)).

12. Judgment to issue in favor of the Plaintiffs on Plaintiffs' challenge to HB 1804 §7(c) (25 O.S. §1313(c)), and the Defendants are permanently enjoined from enforcing said provision.

13. Judgment to issue in favor of Plaintiffs on Plaintiffs' challenge to HB 1804 §9 (68 O.S. §2385.32) and the Defendants are permanently enjoined from enforcing said provision.

14. All parties to bear their own fees and costs in this matter.

15. Judgment to issue separately.

DATED THIS _____ day of December, 2012

ROBIN J. CAUTHRON
UNITED STATES DISTRICT JUDGE

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

CHAMBER OF COMMERCE OF THE UNITED)
STATES OF AMERICA; OKLAHOMA STATE)
CHAMBER OF COMMERCE AND ASSOCIATED)
INDUSTRIES; GREATER OKLAHOMA CITY)
CHAMBER OF COMMERCE; METROPOLITAN)
TULSA CHAMBER OF COMMERCE, INC.;)
OKLAHOMA RESTAURANT ASSOCIATION;)
and OKLAHOMA HOTEL AND LODGING)
ASSOCIATION,)

Plaintiffs,)

vs.)

Case No. CIV-08-109-C

BRAD HENRY, in his official capacity as Governor of)
the State of Oklahoma; W.A. DREW EDMONDSON,)
in his official capacity as Attorney General of the State)
of Oklahoma; KEITH MCARTOR, STAN EVANS,)
MARK ASHTON, ANN CONG-TANG, ELVIA)
HERNANDEZ, RITA MAXWELL, TERESA)
RENDON, SAMMIE VASQUEZ, SR., JUANITA)
WILLIAMS, in their official capacities as Members)
of the Oklahoma Human Rights Commission; and)
THOMAS E. KEMP, JR., JERRY JOHNSON, and)
CONSTANCE IRBY, in their official capacities as)
Members of the Oklahoma Tax Commission,)

Defendants.)

JUDGMENT

The Court enters the following judgments in the above styled matter:

1. Judgment entered in favor of the Plaintiffs on Plaintiffs’ claims challenging HB 1804 §7(c) (25 O.S. § 1313(c)). The Defendants are permanently enjoined from enforcing said provision.

Exhibit 2

2. Judgment entered in favor of the Plaintiffs on Plaintiffs' claims challenging HB 1804 §9 (68 O.S. § 2385.32). The Defendants are permanently enjoined from enforcing said provision.

3. Judgment entered in favor of the Defendants on Plaintiffs' claims challenging HB 1804 §7(b) (25 O.S. §1313(a) and (b)).

4. All parties to bear their own fees and costs. No attorney's fees or costs to be awarded.

ROBIN J. CAUTHRON
UNITED STATES DISTRICT JUDGE