

FILED
SUPREME COURT
STATE OF OKLAHOMA
SEP - 8 2014
MICHAEL S. HUNTER
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Vandelay Entertainment, LLC)
d.b.a. The Lost Ogle,)

Plaintiff/Appellant,)

vs.)

Mary Fallin, in her official)
capacity as Governor of the)
State of Oklahoma; State of)
Oklahoma, ex rel. Office of the)
Governor,)

Defendant/Appellee.)

No. _____

#113187

MOTION TO RETAIN APPEAL IN THE OKLAHOMA SUPREME COURT

Comes now, Vandelay Entertainment, LLC, d.b.a. The Lost Ogle, Plaintiff/Appellant herein, and respectfully requests that the Supreme Court retain jurisdiction in the instant case, rather than assigning it to a division of the Oklahoma Court of Civil Appeals. This Motion is made pursuant to Rule 1.24 of the Oklahoma Supreme Court Rules, and in support of this Motion, Plaintiff/Appellant provides the following:

1. Rule 1.24 provides that while every appeal filed with the Oklahoma Supreme Court is potentially subject to assignment to the Court of Civil Appeals, the Supreme Court, at its own discretion, may retain any appeal of its choosing.
2. The Rule sets out three factors considered by the Supreme Court in guiding this discretion. They are as follows:

- (1) The issues involve an area of law undecided in Oklahoma;
 - (2) Different divisions or panels of the Court of Civil Appeals are not in accord on the issues raised on appeal; or
 - (3) The issues raised on appeal concern matters which will affect public policy and any decision is likely to have widespread impact.
- Okla.Sup.Ct.R. 1.24(c).

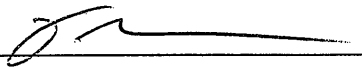
3. While the second factor does not appear to apply to the instant case since no prior decisions of the Oklahoma Court of Civil Appeals have addressed the issues raised, the other two of the three factors militate for retention.
4. As to Factor 1, to the knowledge of the Plaintiff, this case's essential question of whether or not a common law Deliberative Process Privilege exists for Oklahoma's executive agencies and can effect an exception to the Oklahoma Open Records Act has not been decided before by any Oklahoma appellate court. As such, it is a case of first impression appropriate for Supreme Court consideration.
5. As to Factor 3, the issues raised in this appeal are likely to have widespread impact on the creation of public policy. This Court has noted before the importance of the Oklahoma Open Records Act, and of government transparency generally as an essential means for the people of Oklahoma to hold government accountable and fully realize their proper role in a functioning democracy. *See, for example*, Okla. Public Employees Assoc. v. State ex rel. Okla. Office of Personnel Management, 2011 OK 68, at ¶¶36-37. This case concerns an essential feature of this transparency, an Act that applies not only to virtually all of Oklahoma's Executive Branch, but also to all counties and municipalities throughout the state.
6. Further, this action concerns the conduct and interpretation of law by the Governor of Oklahoma herself, our state's highest executive authority. As the Governor's Office oversees and directs (to varying extents) Oklahoma's substantial number of executive, administrative, and regulatory agencies and officials, the Governor's interpretation of, or lack of compliance with, the Oklahoma Open Records Act can impact numerous parts of public policy and administration in Oklahoma. As such, under Oklahoma's system of

checks and balances, it seems appropriate that a questioned claim of new legal authority by the highest official of Oklahoma's Executive Branch should be reviewed directly by the highest officials of Oklahoma's Judiciary.

7. On a final note as to Factor 3, this case presents a question not confined only to its facts or even to substantially similar ones. Disclosure and production of records pursuant to the Oklahoma Open Records Act is a daily occurrence. A public official's claim of Deliberative Process Privilege and the resulting withholding of documents are actions capable of repetition, yet evading review, on any given business day. Given the widespread usage of the Oklahoma Open Records Act by journalists, advocates, academics, and common citizens, this militates strongly for this Court's utmost attention. Furthermore, since the District Court's ruling and Plaintiff's Appeal deal with parts of the Oklahoma Evidence Code, and not just the Open Records Act itself, a decision in this matter potentially could change the rules in civil or criminal discovery whenever a state government agency or agent is involved.

Wherefore, premises considered, Plaintiff requests that this Court, in its sound discretion, choose to retain this appeal.

Respectfully submitted,



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CERTIFICATE OF MAILING TO ALL PARTIES

I hereby certify that a true and correct copy of the Motion to Retain Appeal was mailed this 8th day of September, 2014, by depositing it in the U.S. Mail, postage prepaid, and by electronic mail to Neal Leader and Sandy Rinehart, Counsel for Defendant, at the Office of the Attorney General, Oklahoma City, Oklahoma.

