

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

(1) CHRISTOIPHER BARNETT	)	
	)	
Plaintiff,	)	
	)	Case No. 18-CV-64-TCK-FHM
v.	)	
	)	
(1) HALL ESTILL	)	
GABLE, GOLDEN & NELSON, P.C.;	)	
	)	
(2) J. PATRICK CREMIN;	)	
	)	
(3) JOHNATHAN L. ROGERS,	)	
	)	
and	)	
	)	
(4) UNIVERSITY OF TULSA,	)	
A PRIVATE UNIVERSITY,	)	
	)	
Defendants.	)	

**PLAINTIFF’S MOTION TO STRIKE AND FOR PROTECTIVE ORDER**

Comes now the Plaintiff and hereby submits his motion to strike and request for protective order pursuant to this Court’s inherent authority. Plaintiff seeks an order directing Defendants to not attach any postings from either his Website or Facebook for the purpose of seeking to restrain or limit the speech of Plaintiff. Plaintiff further seeks an order directing Defendants that the use of such postings are proper only as relevant to support a defense of the facts of the case and that such evidence should, to be attached as an exhibit, be admissible under the Rules of Evidence.

## **FACTS**

1. That Defendant Tulsa University (TU) has filed a Motion for Protective Order [Doc. 14]. This motion is replete with exhibits of postings that Plaintiff has on his blog or his Facebook. That Defendant chose to view Plaintiff's posts and view the information posted therein.
2. That thereafter TU filed a reply. [Doc. 22]. Again, the reply contains postings of Plaintiff that TU chose to view.
3. On February 20<sup>th</sup> 2018 the Hall Estill Defendants filed a response in support of TU's motion [Doc. 20]. The Hall Estill Defendants incorporated and adopted<sup>1</sup> TU's motion.
4. That appearing on the last page of the 94 page exhibit [Doc. 14-6] is the clear reference to Plaintiff's website being copyrighted. See Doc. 14-6, p. 94. Of course no permission was requested by TU to reproduce Plaintiff's material.
5. Further on page 3 of Doc. 14-6 Plaintiff clearly references his possible intent to run for public office, in part based on his perception of the events and circumstances of both this and the related litigation. The protected nature of Plaintiff's speech is amplified by his copyright, his public Website and his possibility of running for elected office.

---

<sup>1</sup> Under Fed. R. Civ. P. 10 a pleading is not a motion and as such adopting a motion is not proper. See Adams v. Garvin County Bd. Of County Commissioners 2016 WL 5173395 \*1 n. 2; Mehdipour v. City of Midwest City, No. CIV-17-298-W, p. 1 n. 2 [Doc. 43], (OK W.D., Opin. and Order of Nov. 29<sup>th</sup> 2017).

6. That TU made the conscience choice to view Plaintiff's posts and any offensive posts can be handled quite simply by not reading either Plaintiff's facebook or his website. Further, much of his speech is directed at public officials, matters of public concern and some of the information posted is publicly available documents. Additionally, the requested protective order would interfere with the Tulsa County litigation of Plaintiff's spouse and would tread into the area of a pending Tulsa County civil case. Notably, TU has not sought a gag order in the Tulsa County case involving Plaintiff's spouse.
7. That Plaintiff has filed a response to the motion for protective order asserting the protected nature of the speech, regardless of who is or is not offended by it. Nevertheless, TU and Hall Estill seek to have this Court issue a prior restraint simply because the content is disagreeable. A concept that has for a long time been repugnant to the Constitution. See Near v. Minnesota, 283 U.S. 697, 720. (1931).
8. That the solution to any alleged defamatory speech, under our legal system, is to file a lawsuit, which is itself a constitutional right, seeking damages. In such a suit, Plaintiff would be able to have a jury trial by his peers and assert a myriad of affirmative defenses. But, by seeking a protective order, Defendants seek to eviscerate both Plaintiff's right to a jury trial and his right to affirmatively defend allegations of defamation or other civil wrongs to a jury of his peers via the litigation

process. Instead, Defendants seek to institute highly burdensome and disfavored gag order.

9. That the postings of Plaintiff are not relevant to the substantive merits of this case and do nothing to move the case forward. The only purpose that Defendants keep posting Plaintiff's protected speech is to impugn Plaintiff in the eyes of the Court. This is an improper basis.

### **BRIEF IN SUPPORT**

Plaintiff is seeking a protective order as well as a motion to strike pursuant to this Court's inherent authority. See Link v. Wabash Railroad Co., 370 U.S. 626 (1962). The power of federal courts to issue orders to control its own dockets is "of ancient origin..." Id. at 630. Courts can enter orders necessary to achieve the "orderly and expeditious disposition of cases." Id. at 631. To this end, the Federal Rules of Civil Procedure provides that the rules will be administered in pursuit of "the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. Thus, the Court's inherent ability to control its dockets is unquestioned. See United States v. Nicholson, 983 F. 2d 983, 988 (10<sup>th</sup> Cir. 1993); In re Peterson, 338 F. App'x 763, 764 (10<sup>th</sup> Cir. July 24<sup>th</sup> 2009) (unpublished).

The factors considered by Court when striking a pleading under its inherent powers are generally: 1) prejudice to the party seeking the action; 2) the interference with the judicial process and 3) culpability of the offending

party. See Hancock 857 F. 2d at 1396. Here, these factors support Plaintiff's request. Whatever one thinks of Plaintiff's speech, it is protected. Defendants can simply ignore the speech by not choosing to view his website or blog. The postings have no relevance to the lawsuit. The constant attention Defendants are bringing to the posts serves many purposes: it impugns Plaintiff to the Court; it diverts from the facts of this case; it delays justice by bogging down the Court with unnecessary motions and it generates considerable billable hours. None of these are beneficial to moving this case forward.

The filings of Plaintiff's postings have interfered with the judicial process. The constant filing and attaching of Plaintiff's postings interfere with the judicial process by delaying justice by having to respond and awaiting ruling and also brings considerable attention to inflammatory and irrelevant information, evidence that under the Federal Rules of Evidence is not admissible as either not relevant and prejudicial. See F.R.E. §§ 401-403. In fact, Plaintiff has already had to seek recusal and such request was based in part of TU's attaching as an exhibit the unfavorable opinions about two Judges within this District, including the assigned Judge, expressed by Plaintiff.

Finally, the Defendants are culpable because but for their constant referencing and attaching as exhibits, the Court would be unaware of such posts. The only way to be aware of such is to purposefully seek such information out by persuing the Website of facebook of Plaintiff. Thus, relief is appropriate.

Defendants should be ordered to not attach any exhibits, materials from Plaintiff's website or Facebook not related to the facts of this case and the exhibits attached to the motions should be stricken. Further, any exhibits attached from Plaintiff's postings should not be used unless the evidence complies with F.R.E. 401-403.

Wherefore, Plaintiff respectfully submits his motion.

S/Brendan M. McHugh  
Brendan M. McHugh, OBA #18422  
Attorney for Plaintiff  
P.O. Box 1392  
Claremore, OK 74018  
(918) 608-0111  
Fax: (918) 803-4910  
Email:bmcq1990@gmail.com

### **CERTIFICATE OF ELECTRONIC FILING**

This is to certify that a correct copy of the above document has been sent via the Court's ECF notification system this 20<sup>th</sup> day of February 2018 to:

Phil Richards RICHARDS & CONNOR ParkCentre Bldg., 12th Floor 525 South Main  
Tulsa, Oklahoma 74103 Facsimile: 918-585-1449;

Dana Jim P.O. Box 1011 Vinita, OK 74301 Facsimile: 918-517-3431 Co-Counsel  
for Plaintiff; and

John David Lackey, OBA #20516 Paul & Lackey, P.C. Nine East Fourth Street,  
Suite 400 Tulsa OK 74103-5118 Tele: (918) 584-2583 Fax: (918) 587-8521

s/ Brendan M. McHugh

Brendan M. McHugh