

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

KAYE BEACH,

Plaintiff,

v.

OKLAHOMA DEPARTMENT OF
PUBLIC SAFETY; MICHAEL C.
THOMPSON, COMMISSIONER OF
THE OKLAHOMA DEPARTMENT OF
PUBLIC SAFETY, IN HIS OFFICIAL
AND INDIVIDUAL CAPACITY; RICKY
G. ADAMS, ASSISTANT
COMMISSIONER OF THE
OKLAHOMA DEPARTMENT OF
PUBLIC SAFETY, IN HIS OFFICIAL
AND INDIVIDUAL CAPACITY,

Defendants.

Case No. *CV*-2011-

1469

TS

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.
FILED

SEP 21 2011

In The Office of the
Court Clerk RHONDA HALL

PETITION

COMES NOW the Plaintiff, Kaye Beach ("Ms. Beach"), by and through her attorneys of record M. Eileen Echols, Jonathan D. Echols and Benjamin P. Sisney, of Echols and Associates, and for cause of action against the Defendants, Oklahoma Department of Public Safety, Defendant Michael C. Thompson, Commissioner of the Oklahoma Department of Public Safety, in his official and individual capacity, and Ricky G. Adams, Assistant Commissioner of the Oklahoma Department of Public Safety, in his official and individual capacity, (the "State"), alleges and states:

1. Plaintiff is a resident of the State of Oklahoma and of Cleveland County, Oklahoma.
2. Defendant Oklahoma Department of Public Safety, Defendant Michael C. Thompson, Commissioner of the Oklahoma Department of Public Safety and Ricky G. Adams, Assistant Commissioner of the Oklahoma Department of Public Safety, in their official capacities, are a "Governmental entity," and the individual defendants, in their

individual capacities, are “any official or other person acting under color of state law,” as defined by the Oklahoma Religious Freedom Act. Okla. Stat. tit. 51, §§ 252(5), and 256. While engaging in the violations described herein, the individual defendants are not acting in the scope of their employment.

3. Venue is proper pursuant to Okla. Stat. tit. 12, § 133, as Cleveland County, Oklahoma, is “where the cause, or some part thereof arose,” and this is “[a]n action against a public officer for an act done by him in virtue, or under color, of his office, or for neglect of his official duties.” Ms. Beach is a good faith resident of Cleveland County, Oklahoma.

COUNT I
OKLAHOMA RELIGIOUS FREEDOM ACT OKLA. STAT. TIT. 51, §§ 251 - 258

4. On March 8, 2011, Ms. Beach attempted to apply for a renewal driver’s license at Fusion Tag Agency, a motor license agent of the Defendant Oklahoma Department of Public Safety (“DPS”), in Norman, Cleveland County, Oklahoma.

5. Notwithstanding her satisfaction or ability to satisfy any other relevant requirements for obtaining a renewal driver’s license, Ms. Beach’s attempt to apply was rejected by the DPS agent Fusion Tag Agency.

6. The DPS agent informed Ms. Beach it was required by law to take a high-resolution digital facial photograph, and that she could not apply for or obtain a renewal license without allowing the DPS agent to capture her biometric facial photograph or fingerprints.

7. Ms. Beach requested and was denied an accommodation on account of her sincerely held religious beliefs and religiously motivated practice, which are more fully set forth below.

8. Later that same day, March 8, 2011, Ms. Beach contacted DPS directly and again

explained her religious objection and requested an accommodation. On or about March 11, 2011, Ms. Beach followed up by telephone and was informed by Mr. Steve Grunyard that the biometrics were required by law and that there would be no accommodation or alternative.

9. On March 18, 2011, Ms. Beach sent a letter to DPS identifying her religious objections and requesting an accommodation. Ms. Beach informed DPS that she does not object to a low-resolution facial photograph. Ms. Beach also specifically asked, "Are there any available administrative remedies that I can pursue that I have not pursued to this point or have I exhausted all administrative remedies."

10. On April 27, 2011, she received an email from Stephen J. Krise, General Counsel, Oklahoma Department of Public Safety, stating as follows:

I'm sorry I missed your call, but I have obtained information related to your question of whether there is an alternative to having a driver license photograph that does not capture facial recognition features, commonly referred to as biometric data. Such photographs are required by statute and the law does not provide for an alternative or exemption.

11. Plaintiff's claim is one for a civil rights violation specifically created by, brought under, and governed by the Oklahoma Religious Freedom Act and the Oklahoma and United States Constitutional guarantees of religious freedom incorporated therein. *Shrum v. City of Coweta*, 558 F. Supp. 2d 1212, 1218 (E.D. Okla. Mar. 28 2008) (conducting in-depth analysis and concluding that "the violation of the Oklahoma Religious Freedom Act does not give rise to tort liability, subject to the provisions of the Oklahoma Governmental Tort Claims Act"); see also *Duncan v. City of Nichol Hills*, 1996 OK 16, at ¶18, 913 P.2d 1303, 1308 (Okla. 1996) ("We find it apparent from the language of the two acts that the legislature intended the Governmental Tort Claims Act to apply to tort actions brought

against the state or a political subdivision, whereas the Oklahoma Anti-Discrimination statutes were intended to provide redress for the types of discrimination embodied in the federal Civil Rights Acts, even where the action is brought against the state or a political subdivision.”); *Brander’s Club, Inc. v. City of Lawton*, 1996 OK 66, at ¶18; 918 P.2d 69, 71 (“The [Governmental Tort Claims] Act is not applicable here because plaintiff is not alleging that it has been injured by the City’s tortious conduct but is asserting a violation of the Equal Protection Clause.”). Plaintiff does not seek recovery for loss caused by tortious conduct as would be governed by the Oklahoma Governmental Tort Claims Act. See *id.* Accordingly, compliance with Oklahoma Governmental Tort Claims Act procedural notice provisions is not required. Further, no administrative remedies exist for Ms. Beach to exhaust as Oklahoma law does not provide for or require exhaustion of administrative remedies where, as here, Ms. Beach was not even allowed to apply for a renewal driver license.

12. On June 5, 2011, Ms. Beach received a criminal citation for a violation described as “EXPIRED DRIVER’S LICENSE, with a notation identifying Norman Municipal Code Section 20-509(a), entitled “Driving: License of driver.” This municipal ordinance, in pertinent part, provides that “[n]o person shall operate any vehicle upon the streets of the City without that person being licensed in the manner now required by the laws of the State of Oklahoma, which are hereby incorporated into the Code of the City of Norman as if fully set out in this subsection.” Sec. 20-509(a).

13. On July 18, 2011, Ms. Beach again attempted to obtain a renewal driver’s license at Fusion Tag Agency in Norman, Oklahoma, and was again denied on account of her religiously motivated inability to allow the DPS agent to capture her biometrics.

14. On July 21, 2011, Ms. Beach appeared at the Norman Municipal Courthouse for her arraignment, where a Norman Assistant City Attorney dismissed the charge.

15. As a result of the State's refusal to provide an accommodation, Ms. Beach is unable to lawfully drive a motor vehicle and in fact was criminally charged for driving without a valid driver's license; Ms. Beach has been denied the ability to acquire prescription medication; Ms. Beach has been denied the ability to use her debit card; Ms. Beach has been denied the ability to rent a hotel room; and Ms. Beach has been denied the ability to obtain a P.O. box.

16. Ms. Beach is forbidden by her sincerely held religious beliefs to allow a high-resolution facial photograph, or facial biometric, or other biometrics, in a format compliant with international standards, to be captured and placed into and shared with other entities and jurisdictions in a database managed and accessible by international entities.

17. Ms. Beach has learned that the interoperability and open architecture format for the high-resolution biometric facial photograph used by motor license agents as required by DPS to take the photographs for driver's licenses is an internationally set format determined by the United Nations' International Civil Aviation Organization ("ICAO") intended to be "interoperable," and that the database into which her facial biometric data is placed is managed and accessed by a self-described international organization called the American Association of Motor Vehicle Administrators ("AAMVA") and/or its member jurisdictions and corporate entities.

18. Ms. Beach's religiously motivated practice is abstaining from allowing her biometric information to be captured, placed into and shared with other entities and jurisdictions in

an international system of identification she believes manifests certain Biblical prophecies and prohibitions.

19. Ms. Beach's religiously motivated practice is based on her sincerely held religious beliefs that the Bible, specifically Revelations 13: 16-18 and 14:9-11, explicitly commands believers to not participate in a global numbering identification system using the number of man, and eternally condemns participation in that system.

20. The State's requirement that Ms. Beach, in order to obtain a driver's license, must submit biometric information which is placed into an international system of identification and numbering and shared with other entities and jurisdictions, and refusal to provide an accommodation to Ms. Beach on account of her sincerely held religious beliefs and religiously motivated practice, substantially burdens her free exercise of religion, in violation of the Oklahoma Religious Freedom Act, Okla. Stat. tit. 51, § 253.

21. The State's requirement and refusal to provide an accommodation to Ms. Beach on account of her sincerely held religious beliefs and religiously motivated practice is not essential to further a compelling governmental interest, in violation of the Oklahoma Religious Freedom Act, Okla. Stat. tit. 51, § 253.

22. To the extent the State's refusal to accommodate Ms. Beach's sincerely held religious beliefs and religiously motivated practice does serve a compelling governmental interest, the State's requirement and refusal to provide an accommodation to Ms. Beach on account of her sincerely held religious beliefs and religiously motivated practice is not the least restrictive means of furthering that compelling governmental interest, in violation of the Oklahoma Religious Freedom Act, Okla. Stat. tit. 51, § 253.

23. Therefore, and pursuant to the Oklahoma Religious Freedom Act, Okla. Stat. tit. 51,

§ 256, Ms. Beach is entitled to declaratory relief, a judgment for monetary damages, and reasonable costs and attorney fees.

24. Ms. Beach seeks a declaratory judgment pursuant to Okla. Stat. tit. 12, §§ 1651 and 1652, in that this is a case of actual controversy, and the declaratory judgment, if rendered, would terminate the controversy, or some part thereof, giving rise to the proceeding, and Okla. Stat. tit. 51, § 256(A), which specifically authorizes declaratory relief for actions brought pursuant to the Oklahoma Religious Freedom Act.

COUNT II
OKLAHOMA CONSTITUTION, ARTICLE II, SECTION 30

25. Plaintiff Ms. Beach incorporates the allegations and statements contained in all paragraphs above as if fully set forth herein.

26. Defendants actions of requiring Ms. Beach, in order to obtain a renewal driver's license, to submit her personal and unique biometric measurements and information for capture by Defendants, which are stored and shared without Ms. Beach's knowledge or consent for purposes of law enforcement, constitute an unreasonable warrantless search of her person without the requisite individualized suspicion.

27. Plaintiff Ms. Beach has a reasonable expectation of privacy in the unique biometric measurements of her body which cannot be captured for storage or sharing with the naked eye in public or without her conscious consent, and society is prepared to recognize such expectation of privacy as reasonable.

28. The Defendants' actions violate Article II, Section 30, of the Oklahoma Constitution.

29. Plaintiff Ms. Beach is entitled to a monetary judgment and declaratory and injunctive relief to redress Defendants' violation of Oklahoma Constitution Article II, Section 30.

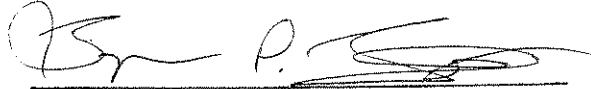
PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff Kaye Beach prays that upon hearing this cause, the Court grant and award:

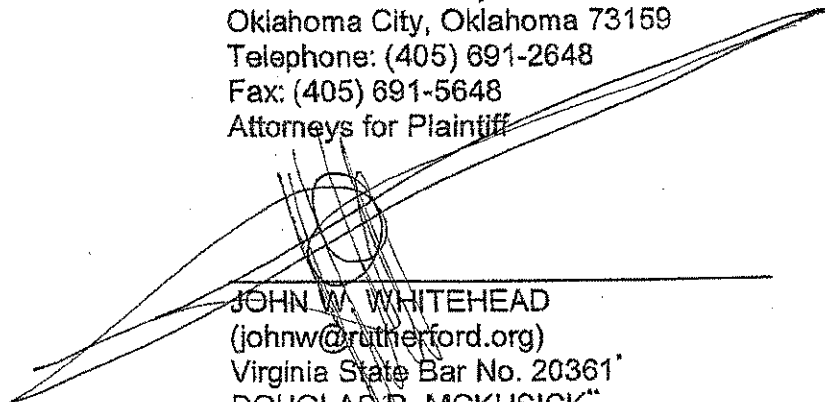
- a. A declaratory judgment that pursuant to the Oklahoma Religious Freedom Act, Ms. Beach's free exercise of religion is substantially burdened by the State's refusal to accommodate her sincerely held religious beliefs and religiously motivated practice;
- b. A declaratory judgment that the State's requirement and refusal to provide an accommodation to Ms. Beach is not essential to further a compelling governmental interest;
- c. A declaratory judgment that even if the State's requirement and refusal to provide an exemption to Ms. Beach was essential to further a compelling governmental interest, the requirement and refusal to provide an accommodation to Ms. Beach is not the least restrictive means of furthering that compelling governmental interest;
- d. A declaratory judgment that in order to comply with the Oklahoma Religious Freedom Act, the State must provide an accommodation to Ms. Beach, on account of her sincerely held religious beliefs and religiously motivated practice, which allows her to submit a low-resolution non-biometric facial photograph in order to apply for and obtain a driver's license, and apply for and obtain a driver's license without the capture of her fingerprint biometrics;
- e. A permanent injunction enjoining the State from denying Ms. Beach a driver's license without providing an accommodation to her on account of her sincerely held religious beliefs and religiously motivated practice, which allows her to submit a low-resolution non-biometric facial photograph in order to apply for and obtain a driver's license, and apply for and obtain a driver's license without the capture of her fingerprint biometrics;
- f. A judgment awarding monetary damages as specifically authorized by Okla. Stat. tit. 51, § 256(B) in excess of \$10,000.00;
- g. An award of reasonable costs and attorney fees, as specifically authorized by Okla. Stat. tit. 51, § 256(B);
- h. A declaratory judgment that Defendants' actions violate Oklahoma Constitution Article II, Section 30;
- i. An injunction prohibiting Defendants from violating Oklahoma Constitution Article II, Section 30;
- j. A judgment awarding monetary damages in excess of \$10,000.00, for Defendants' violation of Oklahoma Constitution Article II, Section 30; and,

- k. Such other and further relief to which Plaintiff may be entitled and which this Court deems just and proper.

Respectfully submitted,



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*Application for Out-of-State Attorney Registration pending.

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VERIFICATION

STATE OF OKLAHOMA)
)
COUNTY OF CLEVELAND) ss.

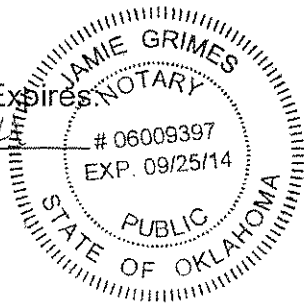
KAYE BEACH, being first duly sworn upon his oath, states:

That she is the Plaintiff above named; that she has read the above and foregoing document and knows the contents thereof, and that the statements, allegations and facts therein set forth are true and correct to the best of her information, knowledge and belief.

Kaye Beach
KAYE BEACH
Plaintiff

Subscribed and sworn to before me this 21 day of Sept., 2011.

My Commission Expires Sept. 25 2014
(SEAL)



Jamie Grimes
Notary Public