IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

VANDELAY ENTERTAINMENT, LLC d.b.a. THE LOST OGLE, Plaintiff,	)	
vs.	)	**Case No:** **CV-2013-763**
MARY FALLIN, in her official Capacity as GOVERNOR OF THE STATE OF OKLAHOMA; STATE OF OKLAHOMA, ex rel. OFFICE OF THE GOVERNOR, Defendants.	)	**Judge:** **Swinton**

BRIEF IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This case presents a stark choice: On the one hand stands the open and transparent government mandated by Oklahoma law and accountable as a servant to a people who remain at all times its master. On the other looms a government inaccessible and unaccountable to citizens stripped of the means to exercise intelligently their sovereign power. In the case at bar, the first is championed by the legislative enactment of the Oklahoma Open Records Act. The second is sanctioned by the executive actions of the Governor of Oklahoma. In the end, this Court will be faced with determining what is to be given greater weight: the will of the people of Oklahoma, or the will of the Governor they elected.

As stated in Plaintiff's Petition and Motion for Summary Judgment, pursuant to the rights guaranteed in the Oklahoma Open Records Act, Plaintiff seeks disclosure and the right of inspection of thirty-one (31) items comprising one hundred (100) pages of documents withheld from public records turned over on March 29, 2012, to Plaintiff and several other media organizations. The Governor, through her General Counsel, has based this withholding partially on an assertion of privileges contrary to both the letter and spirit of the Oklahoma Open Records Act. As this assertion has no legal foundation and there are no dispositive facts in dispute, Plaintiff is entitled to summary judgment on its request to inspect these records.[1]

I. Under Oklahoma law, every public record must be disclosed and released for public inspection unless it falls within a specific exception.

As the Oklahoma Supreme Court stated in *Oklahoma Public Employees Association v. Oklahoma Office of Personnel Management*:

> "Openness in government is essential to the functioning of a democracy...In order to verify accountability, the public must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process. It gives private citizens the ability to monitor the manner in which public officials discharge their public duties and ensures that such

[1] *See* Carmichael v. Beller, 914 P.2d 1051, 1996 OK 48, ¶2, *citing* Ross v. City of Shawnee, 683 P.2d 535, 1984 OK 43, ¶7.

actions are carried out in an honest, efficient, faithful, and competent manner."[2]

In order to better fulfill this essential purpose of ensuring openness in government, in 1985 Oklahoma enacted the Oklahoma Open Records Act, codified in 51 O.S. §§24A.1-29. The Act replaced a previous statutory open records law, codified in 51 O.S. §24, which provided a simple and direct mandate to Oklahoma's public servants:

> "It is hereby made the duty of every public official of the State of Oklahoma, and of its sub-divisions, who are required by law to keep public records pertaining to their said offices, to keep the same open for public inspection for proper purposes, at proper times and in proper manner, to the citizens and taxpayers of this State, and its sub-divisions, during all business hours of the day."[3]

The Oklahoma Open Records Act is significantly longer and more complex than the statute it superseded, but nevertheless continues to provide a broad and simple mandate to public officials, by declaring, "all records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction..." unless the records are exempted by being "specifically required by law to be kept confidential."[4]

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[2] Okla. Public Employees Assoc. v. State ex rel. Okla. Office of Personnel Management, 267 P.3d 838, 2011 OK 68, at ¶36.
[3] 51 O.S. §24 (repealed 1985). *See, for analysis of this prior statute,* State ex rel. Cartwright v. Okla. Industries Authority, 629 P.2d 1244, 1981 OK 47.
[4] 51 O.S. §24A.5; 51 O.S. §24A.5(1).

The Oklahoma Supreme Court and Court of Civil Appeals long have interpreted this mandate as plain and unambiguous: "Unless a record falls within a statutorily prescribed exemption in the Act, the record must be made available for public inspection."[5] As such, a clear affirmative legal duty is imposed on public officials and agencies, including by definition the Defendants in the instant case.[6]

Moreover, this legal duty is in line with traditional and contemporary Oklahoma jurisprudence on statutory construction. As 51 O.S. §24A5 mandates that records "*shall* be made available" (emphasis added), it joins numerous other Oklahoma statutes found to impose a legal duty by employing the plain and ordinary meaning of the word "shall."[7]

The duty to make records available unless exempted carries with it by its very nature the responsibility to justify any withholding of records. As the Oklahoma Supreme Court described this duty in *Citizens Against Taxpayer Abuse v. City of Oklahoma City*: "The public body urging an exemption has the burden to establish

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[5] Citizens Against Taxpayer Abuse v. City of Oklahoma City, 73 P.3d 871, 2003 OK 65, ¶12. *See also*, Merrill v. Oklahoma Tax Commission, 831 P.2d 634, 1992 OK 53, ¶8; Progressive Independence, Inc. v. Oklahoma State Department of Health, 174 P.3d 1005, 2007 OK CIV APP 127, ¶4.

[6] *See* 51 O.S. §§24A.3(2-4) for definitions of "public body," "public office," and "public official." While the Defendants do dispute whether the "Office of the Governor" is a separate entity from the Governor of Oklahoma, the parties do not dispute that Governor Fallin is an elected official subject to the Open Records Act under the plain language of the Act. The Defendants' argument that a purported constitutionally-based privilege or privileges may allow the Governor to decline compliance will be addressed below.

[7] *See, for example,* Maule v. Independent School Dist. No. 9 of Tulsa County, 714 P.2d 198, 1985 OK 110, ¶9, *citing* Oldham v. Drummond Bd. Of Ed. of Ind. Dist. Oldham v. Drummond Bd. Of Ed. of Ind. Dist. I-85, 542 P.2d 1309, 1975 OK 147, State v. Hunt, 286 P.2d 1088, 1955 OK 125.

the applicability of such exemption."[8] Thus it is not the responsibility of citizens, scholars, or the press to prove somehow that a public record should not be exempted from inspection, but rather it is the responsibility of the public official or agency to rebut a clear presumption of availability under the Act.

II. The Defendants have demonstrated no such exception authorizing them to withhold access to the withheld records.

The Oklahoma Open Records Act provides that its own provisions do not apply to "records specifically required by law to be kept confidential..."[9] In this mandate, the Act operates to exempt such confidential records or portions of records from inspection, mandating that to whatever extent is possible, "any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions..."[10]

The trigger for this exemption is plain and unambiguous—if another law explicitly *requires* that a record be kept confidential, the Open Records Act does not operate to overrule that law.[11] As implied above, the converse is also true—absent a contrary law, a public record is subject to disclosure under the Act.

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[8] Citizens Against Taxpayer Abuse v. City of Oklahoma City, 73 P.3d 871, 2003 OK 65, ¶12, *citing* Merrill v. Oklahoma Tax Commission, 831 P.2d 634, 1992 OK 53, ¶8.

[9] 51 O.S. §24A.5(1).

[10] 51 O.S. §24A.5(2).

[11] Neither 51 O.S. §24A.5(1) nor the rest of the Open Records Act specify whether this refers only to state law, or could also include federal law. The non-exhaustive list of examples of confidential material following this subsection all refer to state statutes. However, principles of federalism dictate that in any area in which Congress is constitutionally permitted to regulate a record in the custody of a state official, such as HIPPA or

In the instant case, the Defendants have demonstrated no such contrary grant of confidentiality to cover the withheld records. Instead, the Governor's office has vaguely asserted a purported concept of "open records confidentiality." This concept is not defined in Oklahoma law, but is, by the Defendants' assertions, comprised of three purported privileges. Only one of them, Attorney-client Privilege, can legitimately operate to overrule the Open Records Act, but it does not do so in the instant case.

Attorney-client Privilege

Attorney-client Privilege, when it applies, functions as an exemption to the Act's disclosure requirement. The Act explicitly cites Attorney-client privilege as an example of a record "specifically required by law to be kept confidential."[12] Moreover, this privilege is explicitly defined in the Oklahoma Evidence Code and given the force and protection of law.[13] However, this privilege is also explicitly limited in scope when claimed by public officials or public bodies. As provided in 12 O.S. §2502, which defines and delineates the parameters of Attorney-client Privilege in Oklahoma:

> "There is no privilege under this section...as to communication between a public officer or agency and its attorney unless the

FERPA regulations, such regulation would preempt a contrary state statute. Thus for all practical purposes, the Open Records Act would not overrule a specific federal confidentiality law, no matter how this subsection is interpreted. For this reason, Plaintiff interprets the exemption to apply to both state and federal statutes.

[12] 51 O.S. §24A.5(1)(a).

[13] *See* 12 O.S. §2502.

> communication concerns a pending investigation, claim or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest."[14]

In the instant case, the Defendants have failed to demonstrate that this privilege applies, and it is thus not properly invoked. As stated in Plaintiff's Petition and Motion for Summary Judgment, the Defendants have provided no information indicating that any of the withheld records concern any claim, other legal action, or investigation of any kind. Plaintiff's original request to inspect records is, by its plain language, not seeking any records relating to a legal claim or proceeding of any kind, but rather dealing with policy decisions regarding Medicaid and "Obamacare."[15]

Furthermore, a state official or agency's invocation of Attorney-client Privilege is subject to the limitation that the communication must be confidential and thus not for disclosure to parties outside those necessary "for the rendition of legal services."[16] This required confidential intent, like the relationship to pending legal action and the risk of serious impairment, cannot simply be presumed from the

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[14] 12 O.S. §§2502(D)(7).

[15] Plaintiff acknowledges that due to how search terms sometimes function in retrieving responsive records to a substantial request such as this, the documents found could inadvertently include investigative or legal records not relating to the spirit or essential substance of Plaintiff's request and yet coincidentally responsive to the search terms. However, the Defendants have not indicated such to be the case, and there is no evidence of such known to Plaintiff.

[16] 12 O.S. 2502(A)(5).

location of a record in the office or files of an attorney, or the fact that a record's byline includes a Bar number.[17]

In sum, the Defendants' reliance on Attorney-client Privilege does not exempt the records Plaintiff seeks from the Oklahoma Open Records Act, unless the Governor demonstrates that the withheld records: (1) concerned a pending investigation, claim, or legal action; (2) cannot be inspected or disclosed without serious impairment to the state's ability to resolve the pending matter; AND (3) were made and communicated confidentially between attorney and client and not disclosed to any third parties.

Executive Privilege and Deliberative Process Privilege

The other purported components of "open records confidentiality" cannot qualify as exemptions to the Open Records Act's mandate of public access because neither corresponds to any recognized legal requirement to keep records confidential. Neither Executive Privilege nor Deliberative Process Privilege is included in the Open Records Act itself as an explicit exemption.[18] Likewise, neither is featured or mentioned in any statute of the State of Oklahoma or published appellate case known to the Plaintiff. Hence if either were to operate to exempt

[17] *See* State ex rel. Cartwright v. Okla. Industries Authority, 629 P.2d 1244, 1981 OK 47, ¶¶31-34.
[18] *See* 51 O.S. §§24A.1-29.

materials from Open Records Act inspection, it would have to be by incorporation into the Act's general provision for exemption.

The Act does, as discussed above, allow exemption of materials "required by law to be kept confidential."[19] While Oklahoma law does require numerous specific types of records to be kept confidential, such as juvenile court records, many DHS investigative records, some records of judicial disciplinary actions, and certain personnel records, no claim has been made that any of these specific confidentiality mandates apply in the instant case. Likewise, no claim is made that federal laws such as FERPA or HIPPA apply to any of these records so as to require confidentiality.

Executive Privilege and Deliberative Process Privilege, since they cannot be found in any statute mandating confidentiality, must then reside, if at all, within the category of state evidentiary privileges, which are regulated exclusively by the Oklahoma Evidence Code. Records protected by a state evidentiary privilege, per the Open Records Act's specific terms in 51 O.S. §24A.5(1)(a), are included in the definition of records "required by law to be kept confidential," and thus exempted from inspection.[20] However, neither of the aforementioned two "privileges" claimed by the Governor is even allowed, much less mandated, by Oklahoma law.

[19] 51 O.S. §24A.5(1).
[20] 51 O.S. §§24A.5(1)-(1)(a).

Oklahoma's state evidentiary privileges are limited by two significant controlling statutes, both found in the Oklahoma Evidence Code. In conjunction, these statutes operate to foreclose any claim to "Executive Privilege" or "Deliberative Process Privilege" under Oklahoma law. The first of these delineates privileges generally, regardless of whether the state is involved, by mandating that privileges are to be recognized only as follows:

> "Except as otherwise provided by constitution, statute, or rules promulgated by the Supreme Court no person has a privilege to: (1.) Refuse to be a witness; (2.) Refuse to disclose any matter; (3.) Refuse to produce any object or record; or (4.) Prevent another from being a witness or disclosing any matter or producing any object or record."[21]

Subsequent sections of Oklahoma's Evidence Code go on to sanction and define privileges such as Attorney-client, Physician-patient, Journalist's privilege, Trade secrets, and many others.[22] Neither "Executive Privilege" nor "Deliberative Process Privilege" can be found among them. Likewise, these privileges do not appear within the Oklahoma or United States Constitution or the Rules of the Oklahoma Supreme Court. As such, 12 O.S. §2501 mandates that they cannot be used in order to refuse disclosure or production of records. As such, far from overruling the Open Records Act through a contrary grant of confidentiality, Section

[21] 12 O.S. §2501.
[22] *See* 12 O.S. §§2502-2510.

2501 strongly reinforces Plaintiff's right to inspect the withheld records in the instant case.

Moreover, a second statute further circumscribes any attempt to establish a government-specific privilege to somehow get around Section 2501. As mandated by 12 O.S. §2509, "no other governmental privilege is recognized except as created by the Constitution or statutes of this state," but for one dealing exclusively with compliance with federal requirements of privilege, delineated as follows:

> "If the law of the United States creates a government privilege that the courts of this state must recognize under the Constitution of the United States, the privilege may be claimed as provided by the law of the United States."[23]

By the plain and unambiguous language of not only the Open Records Act, but also the Oklahoma Evidence Code, the Defendants cannot claim any exemption from the Open Records Act duty of disclosure and availability, so long as these statutes are valid and enforceable against the Governor.

III. The Oklahoma Open Records Act is Valid and Enforceable against the Governor despite any Claim of Overriding Constitutional "Executive Privilege."

According to the Defendants' Answer to Plaintiff's Petition, Executive Privilege protects the documents withheld pursuant to it from disclosure under the

[23] 12 O.S. §2509.

Open Records Act regardless of the Act's own provisions.[24] This is due to the purported constitutional origin of Executive Privilege, being supposedly derived from the Separation of Powers Clause found in the Oklahoma Constitution. This clause comprises the entirety of Article IV, and states simply:

> "The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others."[25]

Like the United States Constitution, the Oklahoma Constitution creates a three-branched system of government based on separation and sharing of powers among co-equals.[26] The Governor's assertion of Executive Privilege thus derives its foundation from the idea that privileged protection of otherwise public records is mandated by the inherent duties of the Executive, and thus its scope is defined affirmatively. In other words, Executive Privilege would be incidental to the Governor's inherent authority over the Executive Branch of government, and confined to the scope of that authority. Conversely, the same argument would hold that Executive Privilege could be defined in the negative as the sphere in which the legislature or courts could not compel production of records without overstepping

[24] *See* Defendant's Answer, at ¶4.
[25] Okla. Const. art. IV, § 1.
[26] *See* In re the Application of the Okla. Dept. of Transportation, 64 P.3d 546, 2002 OK 74, ¶¶8-13.

the limits of their inherent authority. In other words, Executive Privilege would be incidental to separation of powers.

Both of the proceeding views—affirmative and negative—are reflected in federal jurisprudence analyzing the similar, but critically distinct, federal system under the United States Constitution.[27] In *United States v. Nixon,* the United States Supreme Court rejected President Richard Nixon's claim of absolute privilege to refuse to comply with a judicial subpoena, but did find a constitutional basis for a limited presidential privilege against disclosure of some confidential communications.[28] Specifically, the Court found that such privilege was constitutionally based to the extent that it was necessitated by the need to ensure "effective discharge of a President's powers."[29]

Forty years after the decision in *U.S. v. Nixon,* the notion of Presidential Executive Privilege is settled law, if still controversial in its broader implications. In the instant case, Plaintiff does not dispute that Executive Privilege exists for the President of the United States. Plaintiff does dispute that this federal doctrine, based on the federal Constitution and distinctly federal powers, should be imported into Oklahoma state law in derogation of our own Oklahoma Constitution, statutes, and jurisprudence.

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[27] *See* United States v. Nixon, 418 U.S. 683 (1974).
[28] *Id.*, at 711.
[29] *Id.*

The Oklahoma Constitution contains multiple provisions that serve to distinguish Oklahoma's system and militate strongly against the deriving of a *U.S. v. Nixon* style doctrine of Executive Privilege, beginning with its quite different delineation of the Governor's responsibilities:

> "The Executive authority of the state shall be vested in a Governor, Lieutenant Governor, Secretary of State, State Auditor and Inspector, Attorney General, State Treasurer, Superintendent of Public Instruction, Commissioner of Labor, Commissioner of Insurance and other officers provided by law and this Constitution, each of whom shall keep his office and public records, books and papers at the seat of government, and shall perform such duties as may be designated in this Constitution or prescribed by law."[30]

Two phrases within this section carry particular relevance to the issue at hand. First, the section's specific requirement that executive officials keep their public records, books, and papers at the seat of government suggests a strong appreciation for the public, rather than private, value and ownership interest in these records. Second, and much more directly, there is the section's provision that executive officials (including the Governor) "shall perform such duties as may be designated in this Constitution *or prescribed by law.*"[31] The language of this provision is clear and unambiguous in mandating that the Governor's duties come not just from the Oklahoma Constitution, but from the statutory enactments as well. This

[30] Okla. Const. art. VI, § 1.
[31] *Id. (emphasis added).*

notion is echoed in how the Oklahoma Supreme Court historically has interpreted the relationship between legislative and executive function in its most basic sense:

> "Legislative, as distinguished from executive, power is the authority to make law, but not to execute it or to appoint agents charges with the duty of enforcement. The latter is purely an executive function."[32]

As the above statement suggests, while the carrying out of policy through execution of law is a purely executive function, the creation of the duties, responsibilities, powers, and sanctions of which law is comprised remains a legislative function. As stated by the Oklahoma Supreme Court: "Except for the reservation of the power of initiative and referendum, the state's policy-making power is vested exclusively in the Legislature."[33]

In the instant case, the Open Records Act and the Oklahoma Evidence Code are both duly-enacted results of this legislative function. Both represent policies made by the legislature and designed to be carried out by the executive branch. Both confer powers to execute these policies, such as specific privileges to refuse disclosure of certain records or set administrative procedural guidelines.[34] Likewise, both confer clear legal duties, such as making public records available for inspection or complying with disclosure and discovery in litigation.[35]

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[32] In re the Application of the Okla. Dept. of Transportation, 64 P.3d 546, 2002 OK 74, ¶9.
[33] Okla. Education Association v. State ex rel. Oklahoma Legislature, 158 P.3d 1058, 2007 OK 30, ¶20.
[34] *See* 12 O.S. §§2502-2510, and 51 O.S. §24A.5(5), respectively.
[35] *See* 51 O.S. §24A.5, and 12 O.S. §2501, respectively.

In spite of this, the Governor contends that we must derive judicially Executive Privilege from a general or implicit concept of separation of powers only to have this privilege directly contravene the explicit declarations of constitutional authority given the legislature and explicit duties required of the Governor by the same Oklahoma Constitution that establishes separation of powers in the first place. In this assertion, the Governor's claim of Executive Privilege not only asks us to disregard the plain language of the statutes involved, but also the plain language of the Oklahoma Constitution. In explicit terms, our Constitution not only places exclusive policy-making authority with the people and legislature, but plainly requires the executive branch to carry out and comply with the policies that are made.

In enacting the Open Records Act and relevant provisions of the Oklahoma Evidence Code, the Legislature has spoken authoritatively, clearly, and unambiguously. With this voice, the Legislature has seen fit to limit the privileges enjoyed by Oklahoma's agents and organs of government. Far from being antithetical to the Oklahoma Constitution and the system of government it establishes, these enactments embody precisely what this Constitution seeks to create and protect.

The preamble to the Oklahoma Constitution lists three purposes for which the people of Oklahoma established it, "...to secure the blessing of liberty; to secure just

and rightful government; [and] to promote our mutual welfare and happiness."[36] These purposes reflect a vision of government accountable and beholding to the people of Oklahoma, a people "vested with the inherent right to know and be fully informed about their government."[37] This inherent right, as recognized in the Open Records Act, flows directly from the Oklahoma Constitution, when it further declares:

> "All political power is inherent in the people; and government is instituted for their protection, security, and benefit, and to promote their general welfare; and they have the right to alter or reform the same whenever the public good may require it..."[38]

Against this strong and abiding interest of the people of Oklahoma, the Governor pits an executive's interest in secrecy and candor behind closed doors. As *U.S. v. Nixon* and its progeny observe, this interest is not unimportant since "a President's communications and activities encompass a vastly wider range of sensitive material than would be true of any 'ordinary individual.'"[39] However, the President's requirements differ significantly from the Governor's in this regard.

First, the duties of the Governor of Oklahoma do not include most, if not all, of the most sensitive duties of the federal Executive. For example, unlike the President of the United States, the Governor is not ultimately tasked with national

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[36] Okla. Const. preamble.
[37] 51 O.S. §24A.2.
[38] Okla. Const. art 2, §1.
[39] *U.S. v. Nixon*, 418 U.S. 683, 715.

security, military leadership of an active-duty combatant force, diplomacy and international relations, negotiating treaties, conducting wars, central intelligence gathering and covert operations, nuclear weapons command authority, or strategic defense.[40] This is not to say that the Governor of Oklahoma does not deal with significant and sensitive matters, but there is an order of magnitude separating the Governor's ability to call up a National Guard unit after a storm and the President's ability to engulf planet Earth in nuclear winter using the codebook in his coat pocket.

Second, the sensitive records of the state Executive's roles in strategic and security matters, law enforcement, and confidential communications are already protected through explicit statutory exemptions already present in Oklahoma law. The Oklahoma Open Records Act explicitly and specifically exempts records relating to terrorism preparedness, vulnerability and threat assessments, as well as many records of the Oklahoma Office of Homeland Security and other executive agencies dealing with security sensitive material.[41] Likewise, law enforcement, investigatory, and personnel records containing sensitive information are protected.[42]

Perhaps most importantly, the Governor's potential interest in candid deliberation and discussion of sensitive matters is already protected by Oklahoma

[40] *See* U.S. Const. art 2, §2; Arthur M. Schlesinger, Jr, *The Imperial Presidency* (1973).
[41] *See* 51 O.S. §§24A.27-28.
[42] *See* 51 O.S. §§24A.8, 24A.12.

law and not offended by inspection of records in the instant case. As a protection to the necessities of good deliberation, the Open Records Act specifically allows a public official to keep confidential notes and other similar memory aids made for personal use.[43] To protect certain discussions, the Act exempts "records of what transpired during a meeting of a public body lawfully closed to the public, such as executive sessions authorized under the Oklahoma Open Meeting Act.[44]" This latter enactment, a counterpart in many ways to the Open Records Act, preserves both the right of citizens to observe and record meetings of executive (and other) public bodies and officials, but also necessarily preserves, through the provision for executive sessions, the ability of public bodies to make decisions effectively in situations where confidentiality is legitimately required.[45]

Even assuming for the sake of argument that the Governor of Oklahoma could demonstrate some remaining unprotected interest militating for the creation of state Executive Privilege, such interest could not scantly balance the rights of the people of Oklahoma, both inherent and explicitly stated in the Oklahoma Constitution and the legislation made pursuant thereto. This legislation, as discussed above, imposes a clear duty on the Governor that has not been met, and that must be met if Oklahoma's future is to live up to the promise of America's past.

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[43] 51 O.S. §24A.9.
[44] 51 O.S. §24A.1(1)(b).
[45] *See* 25 O.S. §§302, 307.

The founders of our great American republic understood the need for an informed citizenry long before Oklahoma was even a territory, much less a state. As framer James Madison wrote, "a popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy..."[46] As Madison continued, "Knowledge will forever govern ignorance: And a people who mean to be their own Governors must arm themselves with the power which knowledge gives."[47]

The people of Oklahoma, like those of all the United States, are sovereign. As Madison observed, as the framers of Oklahoma's Constitution envisioned, as the Oklahoma Legislature effected, and as Oklahoma's Supreme Court has recognized, a sovereign people are not to be governed in secret. That is the People's Privilege. Under Oklahoma law, it is more than a privilege, it is a right—a right possessed by Plaintiff in the instant case, and of which Plaintiff now seeks this Court's enforcement through the granting of summary judgment and an order to release the public records to which Plaintiff and the people of Oklahoma are entitled.

[46] Letter from James Madison to W.T. Berry (Aug. 4, 1822), on file with Library of Congress and available at http://memory.loc.gov/cgi-bin/query/h?ammem/mjm:@field(DOCID+@lit(mjm018999)).
[47] *Id.*

CERTIFICATE OF DELIVERY

The undersigned does hereby certify that on the day of filing, a true and correct copy of the above and foregoing is being delivered to Senior Assistant Attorneys General Neal Leader and Sandra Rinehart at the office of the Attorney General of Oklahoma, via First Class U.S. Mail, postage prepaid.