

Case No.

**IN THE SUPREME COURT
OF THE UNITED STATES**

Dmt MACTRUONG,
Appellant-Petitioner

v.

Kevin Stitt, et al.
Appellees-Respondents

APPENDIX

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

Mac Truong, Ph.D., J.S.D., LL.M., Petitioner *pro se*
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APPENDIX

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FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 6, 2022

**Christopher M. Wolpert
Clerk of Court**

MAC TRUONG,

Plaintiff - Appellant,

v.

KEVIN STITT; GREG MCCORTNEY;
CHARLES MCCALL; JIM OLSEN;
DONALD TRUMP; VIRGINIA
THOMAS; SAMUEL A. ALITO; AMY
CONEY BARRETT; NEIL GORSUCH;
BRETT KAVANAUGH; CLARENCE
THOMAS,

Defendants - Appellees.

No. 22-6144
(D.C. No. 5:22-CV-00491-R)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH, KELLY**, and **ROSSMAN**, Circuit Judges.**

Plaintiff-Appellant, Mac Truong, appearing pro se, appeals from the district court's dismissal of his pro se complaint against various state and federal public officials and others as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). Our review is

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

de novo. Carter v. Wyo. Dep't of Corr., No. 22-8044, 2022 WL 7238406, at *2 (10th Cir. Oct. 13, 2022). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

In his complaint, Plaintiff alleges that Okla. Stat. tit. 63, § 1-731.4 (2022) (Oklahoma Senate Bill 612 (SB 612)), which restricts abortion, violates the United States Constitution. See R. 23. He further alleges that another recent provision, Okla. Stat. tit. 63, § 1-745.39 (2022), violates his copyrighted material because it permits civil actions by private citizens against abortion providers. See id. at 23–24.

The district court found Mac Truong lacked Article III standing to challenge SB 612 as he is a male citizen residing in New Jersey who has not alleged he is subjected to the challenged statute. R. 131–32.¹ Moreover, his arguments that he does have standing because 1) he is a naturalized U.S. citizen, 2) his daughter is of child-bearing age and is concerned about anti-abortion legislation, 3) he loves to have sex without worrying about pregnancy, and 4) he invented a machine that allows people to have sex without being physically close were found unavailing by the district court. R. 132. As for the copyright claim, the district court dismissed the claim by determining that Mac Truong's idea of using community civic officers to enforce city regulations and ordinances ("the CCO Network"), is precisely that — an idea — and not subject to copyright. R. 132–33.

¹ Moreover, the district court held that to the extent Plaintiff challenges SB 612 in light of Roe v. Wade, 410 U.S. 113 (1973), the Supreme Court's decision in Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022), has rendered that challenge moot. R. 132.

To establish Article III standing, a plaintiff must demonstrate that “(1) he or she has suffered an injury in fact; (2) there is a causal connection between the injury and the conduct complained of; and (3) it is likely that the injury will be redressed by a favorable decision.” Phelps v. Hamilton, 122 F.3d 1309, 1326 (10th Cir. 1997). Further, the injury must be (1) “concrete and particularized,” and (2) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (quoting Whitmore v. Arkansas, 495 U.S. 149, 155 (1990)). On appeal, rather than challenging the district court’s rejection of his standing to challenge SB 612, Mac Truong states the Eleventh Amendment does not bar his suit as he is not suing the state of Oklahoma. *Aplt. Br.* at 4–5. While this court construes pro se pleadings liberally, we “cannot take on the responsibility of serving as the litigant’s attorney in constructing arguments and searching the record.” Garrett v. Selby Connor Maddux & Janner, 425 F.3d 836, 840 (10th Cir. 2015). Since Mac Truong fails entirely to address why the district court erred in denying him standing, he provides no basis for reversal. In any event, for substantially the same reason given by the district court, Mac Truong does not have standing to challenge SB 612. R. 131–32.

As for Mac Truong’s copyright claim, he alleges he has a copyright interest in his idea — the CCO Network — because he has expressed it in a document and in his four-hour movie. *Aplt. Br.* at 6. However, copyright protection does not “extend to any idea . . . [or] concept . . . regardless of the form in which it is described, explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b). In other

words, copyright law “protects the expression of ideas rather than the underlying ideas themselves.” Enter. Mgmt. Ltd., Inc. v. Warrick, 717 F.3d 1112, 1117 (10th Cir. 2013). Thus, while Mac Truong could arguably allege a copyright interest in his movie, he cannot assert such interest in the mere idea of employing private citizens to enforce certain laws and regulations even if expressed in a tangible form.

AFFIRMED. We DENY Mac Truong’s request to strike Defendant-Appellee Kevin Stitt’s response brief. Aplt. Reply Br. at 2–3. We further DENY Mac Truong’s motion to proceed in forma pauperis because he has “failed to show the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” Rolland v. Primesource Staffing, L.L.C., 497 F.3d 1077, 1079 (10th Cir. 2007).

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

January 3, 2023

Christopher M. Wolpe
Clerk of Court

MAC TRUONG,

Plaintiff - Appellant,

v.

KEVIN STITT, et al.,

Defendants - Appellees.

No. 22-6144
(D.C. No. 5:22-CV-00491-R)
(W.D. Okla.)

ORDER

Before TYMKOVICH, KELLY, and ROSSMAN, Circuit Judges.

Appellant's motion for reconsideration, construed as a petition for rehearing, is
denied as construed.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

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

DMT MAC TRUONG, et al.,

Plaintiffs,

v.

KEVIN STITT, et al.,

Defendants.

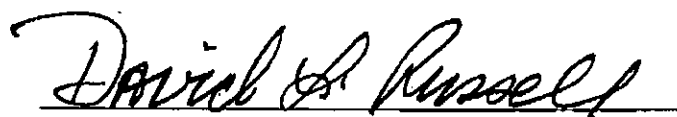
Case No. CIV-22-491-R

ORDER

Before the Court is a “Notice of Motion for Reconsideration and Order Vacating this Court’s July 19, 2022 Dismissal Order.” (Doc. No. 13). The Court finds no basis for awaiting a response from the Defendants, and hereby DENIES Plaintiff’s Motion.

Rule 59(e) permits a Court to alter or amend a judgment on timely motion by a party. Fed.R.Civ.P. 59(e). The Court may amend the judgment in its discretion where (1) there has been an intervening change in the controlling law; (2) new evidence that was previously unavailable has come to light; or (3) the Court sees a need to correct clear error or prevent manifest injustice. *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). “Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law.” *Id.* Despite Plaintiff’s arguments to the contrary, the Court finds no basis for reconsideration of its prior dismissal of Plaintiff’s Complaint. Accordingly, the Motion is hereby DENIED.

IT IS SO ORDERED this 8th day of August 2022.

A handwritten signature in black ink, reading "David L. Russell", written over a horizontal line.

DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

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

DMT MAC TRUONG, et al.,

Plaintiffs,

v.

KEVIN STITT, et al.,

Defendants.

Case No. CIV-22-491-R

JUDGMENT

In accordance with the Court's Order entered this date, Plaintiff's Complaint is dismissed. Judgment in favor of Defendants.

ENTERED this 19th day of July 2022.



DAVID L. RUSSELL

UNITED STATES DISTRICT JUDGE

Sealed 7/22/22

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

DMT MAC TRUONG, et al.,

Plaintiffs,

v.

KEVIN STITT, et al.,

Defendants.

Case No. CIV-22-491-R

ORDER

Before the Court is a *pro se* Complaint filed by Plaintiff Mac Truong, on his behalf and ostensibly on behalf of twenty-four additional individuals or entities. The Court has reviewed Plaintiffs' Complaint and finds that it should be dismissed upon filing as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

The Court should dismiss a case in which *in forma pauperis* status has been granted if at any time it determines the action is frivolous or malicious, seeks relief from a person immune from such relief, or fails to state a claim for relief. 28 U.S.C. § 1915(e)(2)(B). Although § 1915 directly references prisoners, § 1915(e)(2) applies to all litigants, prisoners and non-prisoners alike. *See Lister v. Dept. of Treasury*, 408 F.3d 1309, 1312 (10th Cir.2005)(28 U.S.C. § 1915(e)(2)(B) requires a district court to dismiss the complaint of a party proceeding IFP whenever the court determines the action is frivolous or malicious, fails to state a claim for relief, or seeks damages from persons immune from such relief); see also *Merryfield v. Jordan*, 584 F.3d 923 (10th Cir.2009)(affirming dismissal of nonprisoner's complaint as frivolous and as stating no claim for relief, pursuant

to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii)); *Ruston v. Church of Jesus Christ of Latter-Day Saints*, 304 F. App'x 666 (10th Cir.2008)(affirming dismissal of nonprisoner's frivolous complaint under § 1915(e)(2)(B)) (citing cases). In considering whether to dismiss a claim *sua sponte* for failure to state a claim under rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court must accept as true all factual allegations in the complaint and must draw all reasonable inferences in the plaintiff's favor. *See Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir.1991). In reviewing a *pro se* complaint, the court applies the same legal standards applicable to pleadings drafted by counsel, but the complaint must be liberally construed. *See id.* at 1110. However, "[t]he broad reading of the plaintiff's complaint does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Id.*

The Court first dismisses all Plaintiffs except Dr. Truong. In general, a party may plead and conduct his own case in person or through a licensed attorney. *See* 28 U.S.C. § 1654. A *pro se* litigant, however, may not represent anyone other than himself. *See e.g., Navin v. Park Ridge Sch. Dist.* 64, 270 F.3d 1147 (7th Cir.2001); *Iannaccone v. Law*, 142 F.3d 553, 558 (2d Cir.1998) ("[B]ecause *pro se* means to appear for one's self, a person may not appear on another person's behalf in the other's cause."). Although the individual averments allegedly made by the Plaintiffs are stated in the first person, only Plaintiff Truong signed the Complaint. He cannot, however, proceed without the signatures of those persons, who must either obtain representation or appear on their own behalf.¹

¹ Although issues of credibility do not factor into the Court's analysis, the Court is dubious that former Presidents George W. Bush and Bill Clinton, as well as the many actors, politicians, and well-known business figures—including Bill Gates and Warren Buffet—have agreed to participate in this litigation.

With regard to the substance of Plaintiff's claims, the Court finds that the Complaint is frivolous. Plaintiff is a resident of New Jersey. The named Defendants include the Governor of Oklahoma, three Oklahoma legislators, the former President of the United States, five Supreme Court justices, and the wife of one of those justices. According to his jurisdictional statement, this case arises under federal law and Plaintiff is entitled to recovery for the violation of copyright as well as for civil rights violations. He asserts that Oklahoma Senate Bill 612, to be codified at Okla. Stat. tit. 63 § 1-731.4 and set to go into effect on August 26, 2022, which restricts abortion in Oklahoma except in an attempt to save the life of a pregnant woman in a medical emergency, violates the United States Constitution.² He contends that another recent provision, Okla. Stat, tit. 63 § 1-745.39, violated his copyrighted material because it permits civil actions by any person against those who perform abortions.

The Court finds that Plaintiff lacks standing to challenge SB 612 on constitutional grounds. "In every federal case, the party bringing the suit must establish standing to prosecute the action." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004). The case or controversy requirement of Article III limits federal jurisdiction to cases in which the plaintiff can demonstrate that (1) he has suffered an injury in fact; (2) there is a causal connection between the injury and the conduct complained of; and (3) it is likely that the injury will be redressed by a favorable decision. *Phelps v. Hamilton*, 122 F.3d 1309, 1326

² Plaintiff contends, in part, that the bill cannot stand in light of *Roe v. Wade*. Since the filing of the Complaint the Supreme Court issued *Dobbs v. Jackson*, --- U.S. ---, 142 S.Ct. 2228 (2022), which overturned *Roe* by holding that abortion is not a right under the federal constitution. Plaintiff's Complaint was filed in apparent response to the leaking of the opinion in that case.

(10th Cir.1997) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, (1992)). Plaintiff, a male residing in New Jersey, is simply too far removed from Oklahoma to challenge the statute, and furthermore, he has not alleged that he is subject to the statute he seeks to challenge. Rather, he complains throughout about the alleged violation of women's right to privacy, which clearly does not implicate his rights. Via a Motion for Summary Judgment Plaintiff argues that he has standing because: (1) he is a naturalized U.S. citizen; (2) he is the father of a woman of child-bearing age who is concerned about anti-abortion legislation; (3) he loves to have sex and wishes to do so without being overly concerned about accidental pregnancy; and (4) he is the inventor of a machine that allows people to have sex without being physically near one another. The Court finds that none of these grounds provides Plaintiff with standing to challenge the Oklahoma statute.³

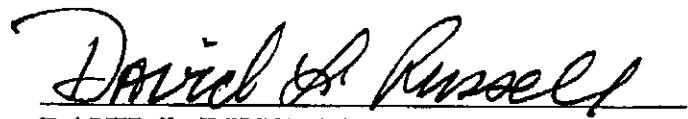
To the extent Plaintiff is attempting to pursue a claim for copyright violation, his claim fails. The Copyright Act protects the "original works of authorship fixed in any tangible medium of expression," including pictorial and graphic works. 17 U.S.C. § 102(a). To state a claim of copyright infringement, Plaintiff must allege: "(1) ownership of a valid copyright and (2) copying of constituent elements of the work that are original." *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 942 (10th Cir. 2002). In order to establish a claim for copyright violation Plaintiff must allege "there is a substantial similarity between those aspects of Plaintiff's work which are legally protectable and the Defendants' work." *La*

³ Additionally, to the extent Plaintiff argues that Senate Bill 612 is unconstitutional in light of *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court pronouncement in *Dobbs* that *Roe* is no longer good law renders Plaintiff's challenge to the statute moot.

Resolana Architects v. Reno Inc., 555 F.3d 1171, 1180 (10th Cir. 2009)(quotation marks and citation omitted). To make this determination, the court's task consists of "separating unprotectable ideas from protectable expression in [the plaintiff]'s copyrighted works and comparing the remaining protectable expression to the [defendant's] images to determine whether they are substantially similar." *Blehm v. Jacobs*, 702 F.3d 1193 at 1200 n.4 (10th Cir. 2012). Plaintiff purports to have copyrighted an idea; however, copyright protection does not "extend to any idea ... [or] concept ... regardless of the form in which it is described, explained, illustrated, or embodied in such work." 17 U.S.C. § 102(b). "This provision enshrines the fundamental tenet that copyright protection extends only to the author's original expression and not to the ideas embodied in that expression." *Blehm*, 702 F.3d at 1200 (quotation marks and citation omitted). "[T]he copyright law is not a patent law: it protects the expression of ideas rather than the underlying ideas themselves." *Enter. Mgmt. Ltd., Inc. v. Warrick*, 717 F.3d 1112, 1117 (10th Cir. 2013). Simply stated, Plaintiff's idea of creating community civic officers who could issue tickets to violators of enforceable city regulations or ordinances is an idea, not subject to copyright. Accordingly, the provisions of Okla. Stat. tit. 63 § 1-745.39 did not violate his copyright and dismissal is appropriate.

Having reviewed the Complaint and its attachments as well as Plaintiff's Notice of Motion, the Court hereby DISMISSES all Plaintiffs for the reasons set forth herein. The Motion to Dismiss filed by Defendant Stitt (Doc. No. 6) is DENIED AS MOOT as is Plaintiff's Notice (Doc. No. 7).

IT IS SO ORDERED this 19th day of July 2022.

A handwritten signature in cursive script, reading "David L. Russell", written over a horizontal line.

DAVID L. RUSSELL

UNITED STATES DISTRICT JUDGE

10

**Additional material
from this filing is
available in the
Clerk's Office.**

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

May 4, 2023

Mac Truong
875 Bergen Avenue
Jersey City, NJ 07306

RE: Truong v. Stitt, et al.
USCA10 No. 22-6144

Dear Mr. Truong:

The above-entitled petition for writ of certiorari was originally postmarked March 31, 2023 and received again on May 2, 2023. The papers are returned for the following reason(s):

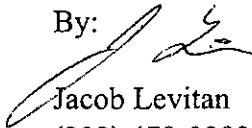
The petition exceeds the limit of 40 pages allowed. Rule 33.2(b).

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk

By:


Jacob Levitan
(202) 479-3392

*Complied with
Thank you!*

Enclosures

*Done
5/20/2023*

