

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)
)
)
Plaintiff,)

v.)

Case No. 05-CV-00329 GKF-SAJ

TYSON FOODS, INC., TYSON)
POULTRY, INC., TYSON CHICKEN,)
INC., COBB-VANTRESS, INC., CAL-)
MAINE FOODS, INC., CAL-MAINE)
FARMS, INC., CARBILL, INC., CARGILL)
TURKEY PRODUCTION, LLC,)
GEORGE'S, INC., GEORGE'S FARMS,)
INC., PETERSON FARMS, INC.,)
SIMMONS FOODS, INC., and WILLOW)
BROOK FOODS, INC.,)
)
)
Defendant.)

**REPLY TO PLAINTIFFS' RESPONSE TO MOTION OF OKLAHOMA FARM
BUREAU, INC, FOR PERMISSION TO FILE BRIEF AS *AMICUS CURIAE*
IN OPPOSITION TO THE PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION AND BRIEF IN SUPPORT THEREOF**

The Oklahoma Farm Bureau has participated in legislative and administrative proceedings that resulted in the regulated environment in which Oklahoma's farmers and ranchers operate. This participation gives the Farm Bureau a unique perspective on the collective statement of the public interest that the regulatory and legislative structure represents and the extent to which and ways in which the requested injunction conflicts with it. As a result, the subject of the Farm Bureau's proposed *amicus* brief should be analytically useful. The fact

that the Farm Bureau is aligned with the Defendants in opposing the injunction does not override this Court's discretion to decide what information the Court may find useful. The Farm Bureau, representing its 168,000 farm family members, asked leave to file a brief in response to the Plaintiffs' Motion for Preliminary Injunction to provide the Court with the perspective of the State's largest agricultural organization (DKT # 1402). Plaintiffs oppose the Farm Bureau's involvement (DKT # 1423). Therefore, the Farm Bureau provides the Court with this Reply to Plaintiffs' Response.

I.
It Is Within The Purview Of The Court
To Determine The Usefulness Of The Farm Bureau's Perspective.

Plaintiffs oppose the Farm Bureau's motion for two reasons – first, their own characterization of the Farm Bureau's positions as lacking utility and second, their claim that the Court need not consider interests other than Plaintiffs' interests when deciding whether or not to issue the injunction. First, Plaintiffs' attempt to persuade the Court about usefulness of *amicus* briefing notwithstanding, the Plaintiffs concede that this Court may grant leave to appear *amicus curiae* if the Court (not Plaintiffs, Defendants or *amici*) deems the information offered timely and useful. See p. 2 of *Plaintiffs' Response* (DKT # 1423).

Plaintiffs refer to the Farm Bureau's request as focusing on the "business impact" and the "economic interests" of Oklahoma's farmers and ranchers as if those interests are not worth considering. It is a business activity that Plaintiffs wish to enjoin, and the impact on Oklahoma's farming and ranching community of banning that activity is worthy of consideration. Moreover, the requested injunction has broader implications and the Farm Bureau set out broader bases for its involvement as *amicus*. The Farm Bureau has illustrated the concern of its constituents for water quality and animal manure management through participation in creating Oklahoma's

regulatory and non-regulatory mechanisms which Oklahoma's farmers and ranchers rely upon and operate within. It is perplexing when the government that has set the regulations and enacted and enforced the laws wishes to judicially circumvent those regulations and laws. The Farm Bureau can offer the perspective of the regulated community on these issues.

Second, Plaintiffs posit that *amicus* briefs would not be useful because both Plaintiffs' claimed "governmental plaintiff" status and the statute under which they seek their injunction void the usual necessity to balance interests. The State of Oklahoma created specific agencies charged with regulating the activities Plaintiffs challenge. Those agencies are not parties, and Plaintiffs do not seek to enforce Oklahoma's regulatory scheme. That fact distinguishes the Plaintiffs' role from that in the cases cited in Plaintiffs' Response because the governmental plaintiffs in those cases were seeking to enforce or require permits, not seeking to override the regulatory scheme. That fact also distinguishes these Plaintiffs from the individuals who sue as private attorneys general under the citizen suit provision of the Resource Conservation and Recovery Act in order to enforce a regulatory act or scheme. Indeed, this case is one in which the equitable analysis should not be avoided. *See, e.g., Harrison v. Indiana Auto*, 528 F.2d 1107, 1122-23 (7th Cir. 1976) ("Pollution nuisance cases present no special features that should exempt them from the equitable requirements for injunctive relief, including proof of irreparable harm and inadequate remedy at law.") This Court should not be foreclosed from considering a variety of viewpoints before deciding whether or not the standard for granting an injunction allows the Plaintiffs to avoid the necessity of proving irreparable harm, inadequate remedy at law, and balancing the interests involved.

II.
**The Farm Bureau's Opposition To The Injunction
Does Not Prevent Participation As *Amicus Curiae*.**

The same case that Plaintiffs cite as support for their opposition to any *amicus* brief based on the proposed *amicus*' opposition to Plaintiffs' requested injunction also refers to a 1963 Yale Law Journal article discussing the fact that as long as 45 years ago "the institution of the *amicus* brief ha[d] moved from neutrality to partisanship, from friendship to advocacy." *See Leigh v. Engle*, 535 f. Supp. 418, 422 (N.D. Ill. 1982) *citing* Krislov, *The Amicus Curiae Brief: From Friendship to Advocacy*, 72 Yale L.J. 694, 704 (1963). *Amici curiae* perform a valuable role precisely because they are nonparties who often have different perspectives from the principal litigants, assist the Court by broadening its perspective on the issues raised, and facilitate consideration of a wide variety of information and points of view including drawing the court's attention to broader legal or policy implications that might otherwise escape the Court's consideration. *See Connerly v. State Personnel Bd.*, 129 P.3d 1, 5-6 (Cal. 2006); *State of Tennessee ex rel. Commissioner of Transportation v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734, 757-759 (Tenn. Ct. App. 2001). "[B]y the nature of things an *amicus* is not normally impartial.... [T]here is no rule... that *amici* must be totally disinterested." *Waste Management of Pennsylvania, Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D.Pa. 1995). Whether to grant participation as an *amicus curiae* is a matter within the sound discretion of the Court. *See, e.g., National Organization for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000). Courts generally permit such participation when the proffered information is useful or otherwise necessary to the administration of justice. *United States v. Michigan*, 940 F.2d 143, 164-65 (6th Cir. 1991). The Farm Bureau's opposition to the proposed injunction does not preclude its participation as an *amicus*.

Conclusion

In the case before this Court, Plaintiff asks that litter application within the Illinois River Watershed be banned. The effect of such a prohibition would be far-reaching, affecting the lives and livings of cattle ranchers, farmers and others who make lawful use of manure as fertilizer. Moreover, the legal effect of granting these Plaintiffs an injunction against an activity legislatively authorized by the State of Oklahoma should be considered. The Farm Bureau's routine representation of its constituency in administrative, regulatory, and legislative contexts makes it particularly situated to articulate the concerns of farmers and ranchers who would bear the brunt of the injunction requested. The Farm Bureau asks that the Court allow it to file an *amicus* brief so that the concerns of the Oklahoma Farm Bureau and the agricultural community it represents might be considered.

Respectfully submitted,

s/ LeAnne Burnett

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ATTORNEYS FOR OKLAHOMA FARM
BUREAU, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2008, I electronically transmitted to the Court Clerk using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I hereby certify that on this 4th day of January, 2008, I served the same document via U.S. Postal Service on the following, who are not registered participants of the ECF system:

C. Miles Tolbert
Secretary of the Environment
State of Oklahoma
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s/ LeAnne Burnett
